ALL INDIA LAW DIGEST

2014

(STATUTORY DIARY)

BOOK REVIEWS/JOURNAL

THIRD PARTY RISK – LIABILITY OF INSURANCE COMPANY

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Chapter XI of the Motor Vehicles Act, 1988 provides for compulsory insurance of vehicles against third party risks. It is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object. In a battle between the insurance company and the owner, the claimant cannot be left to fend for himself. Keeping the beneficial nature of the provisions, in the case of *National Insurance Co. Ltd. v. Swaran Singh*, 2004 ACJ 1 (SC), a Full Bench of Hon'ble Apex Court had opined that—

> "a beneficent statute, as is well known, must receive a liberal interpretation. Furthermore, the liability of the insurer is statutory one. The liability of the insurer to satisfy the decree passed in favour of a third party is also statutory."

After considering a large number of case-law, their Lordships of the Hon'ble Supreme Court had observed that—

> "the liability of the insurance company to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof has been holding the field for long time."

The case of *Swaran Singh*, has been decided by a Full Bench of the Hon'ble Supreme Court. So far, the opinion of the Full Bench has not been diluted by any other Larger Bench. Therefore, the principle laid down in *Swaran Singh's* case still holds the field.

Contract of Insurance

The insurance company is governed by a contract between it and the insured. An agreement without consideration is void. Hence, 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. The law relating to contracts of insurance is part of general law of contract. Section 146(1) contains a prohibition on the use of the motor vehicles without an insurance policy has been taken in accordance with Chapter XI of the Motor Vehicles Act. The manifest

object of this provision is to ensure that the third party, who suffers injuries due to the use of the motor vehicles, may be able to get damages from the owner of the vehicle and recoverability of the damages may not depend on the financial condition or solvency of the driver of the vehicle. In *Oriental Insurance Co. Ltd. v. Inderjit Kaur*, 1998 ACJ 123 (SC), the Apex Court held that—

> "the insurer is not entitled to avoid liability towards a third party for not having premium since third party risk is a public interest to be served by the insurance company in accordance with law. It has prevailing effect over the insurer's own interest."

In the same case the Hon'ble Supreme Court held that—

> "Once a certificate of insurance is issued, the insurance company would not be absolved its obligation to third parties."

Commencement of Policy

The contract of insurance company naturally will be applicable from the date of payment received by the insurance company. Section 64VB of Insurance Act, 1938, provides that "no risk shall be assumed by the insurance company unless premium is received in advance." This provides that the risk may be assumed earlier than the date on which the premium has been paid in cash to the insurer. The cover note or the policy comes into effect from date of payment received by the company. It becomes operative from the commencement of that day unless it is a special contract mentioning the time. The insurance company cannot issue a policy unilaterally from a future date without the consent of the holder of a policy. In the matte of *New India Assurance Co. Ltd. v. Ramdayal*, 1990 ACJ 545 (SC), policy was obtained on the date of accident. The insurance company repudiated its liability on the ground that policy had been taken after the accident. The Apex Court observed that—

> "When the policy is taken during any part of the day, it becomes operative from the commencement of that day."

No doubt, a contract of insurance is to be governed by the terms thereof, but a distinction must be borne in mind between a contract of insurance which has been entered into for the purpose of giving effect to the object and purpose of the statute and one which provides for the reimbursement of the liability of the owner of the vehicle in terms thereof. In that limited sense, a contract of insurance entered into for the purpose of covering a third party risk would not be purely contractual. An ordinary contract of insurance does not have a statutory flavour. The Act imposes an obligation on the part of the insurance company to reimburse the claimant both in terms of the Act and also the contract. So far as the liability of insurance company which comes within the purview of Sections 146 and 147 is concerned, the same subserves a constitutional goal, namely, social justice. A contract of insurance covering the third party risk must therefore, be viewed differently from a contract of insurance. There is no contractual relation between the third party and the insurer. Because of the statutory intervention in terms of Section 149, the same becomes operative in essence and Section 149 provides complete protection.

One of the grounds which are available to the insurance company to deny its statutory liability as envisaged under sub-section (2) of Section 149 of the Act is that it was obtained by non-disclosure of a material fact or by a representation of fact which was false in some material particulars. Even in the cases of statutory lapse or lapses under Section 149 of the Act, three Judge Bench of the Supreme Court in *National Insurance Co., Ltd. v. Swaran Singh*, 2004 ACJ 1 (SC), held that

> "the insurance company will make the payment and then recover the same from the owner even as a land revenue."

The interest of the insurer is fully protected even if lapses on the part of the insured are available. *On the other hand, the Claimants will be nowhere if for no fault of themselves payment of compensation in any form is refused or withheld.* Hence, any of the statutory lapses are to be controlled by the statute itself to give the benefit to the ultimate beneficiary under the beneficial piece of legislation because he has no protection against the payment of compensation in such circumstances. In doing so, if any Tribunal directs insurance company to pay the amount of compensation to the Claimants with a direction upon them to recover such amount from the owner the same cannot be said to be departure from the statutory obligation. Even if there are lapses under Section 149, as per the doctrine of "pay and recover", the insurance company is liable to pay compensation to claimants and recover the same from the owner.

Case Law:

(1) In *New India Assurance Co. Ltd. v. Ramdaval and others*, 1990 ACJ 545 (SC), the Motor Accidents Claims Tribunal held that the insurer was not liable to meet the award of compensation against the owner of the vehicle, as the policy had been taken after the accident. On appeal, the High Court held that the insurance policy obtained on the date of insurance *i.e.* from the previous mid-night, and since the accident took place on the date of policy, the insurer became liable. The Hon'ble Supreme Court dealing with the appeal by the insurer held that—

> "When a policy is taken on a particular date, its effectiveness is from the commencement of the date. In the instant case, the insurance was taken from 28th September, 1984, which is the date of the accident. The High Court was, therefore, right in holding that the insurer was liable in terms of the Act to meet the liability of the owner under the award."

(2) In *J. Kalaivani v. K. Sivashankar*, 2002 ACJ 613 (SC), the Hon'ble Supreme Court on the point of commencement of liability of insurance Company, held that

> "The liability of the insurance company would commence from the time when a specific mention of time is made and in the absence of such time the policy would become operative from previous midnight when bought."

(3) In *National Insurance Co. Ltd. v. Abhay Singh Pratap Singh Waghela and others*, 2008 ACJ 2697 (SC), the Hon'ble Supreme Court in Paragraph 15 of its judgment observed that—

> "One of the grounds which are available to the Insurance Company to deny its statutory liability envisaged under sub-section (2) of Section 149 of the Act is that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particulars."

Then the Hon'ble Supreme Court in Paragraph 17 of its judgment held that—

> "So far as the liability of the insurance company which comes within the purview of Sections 146 and 147 is concerned, the same sub-serves a constitutional goal, namely, social justice. A contract of insurance covering the third party risk must, therefore, be viewed differently *vis-à-vis* a contract of insurance *qua* contract."

(4) In *Oriental Insurance Co. Ltd. v. Dharamchand and others*, 2010 ACJ 2659 (SC), the Hon'ble Supreme Court in Paragraph 4 of its judgment observed that

> "The insurance company sought to disown its liability on the plea that the

accident took place before the commencement of the insurance as indicated in the cover note. But, both the Tribunal and the High Court turned down the plea and held the insurance company liable to pay the compensation amount."

(5) In *United India Insurance Co. Ltd. v. Laxmamma and others*, 2012 ACJ 1307 (SC), the Hon'ble Supreme Court summarized the legal position in Paragraph 19 of its judgment as follows:

"In our view, the legal position in this : where the policy of insurance is issued by an authorized insurer on receipt of cheque towards payment of premium and such cheque is returned dishonoured, the liability of authorized insurer to indemnify third parties in respect of the liability which that policy covered subsists..."

In Paragraph 21 of its judgment, the Hon'ble Supreme Court held that—

"In view of the above, the judgment of High Court impugned in the appeal does not call for any interference. Civil appeal is dismissed. However, the insurer shall be at liberty to prosecute its remedy to recover the amount paid to claimants from the insured."

Conclusion

The view of the Courts has been changed after the passing of judgment in *Swarn Singh's* case (supra), in the Year, 2004. The provisions contained in the Motor Vehicles Act, 1988, relating to third party risks, are for serving a specific social purpose and are Social Welfare Provisions. The liability of insurer is statutory and the liability of the insurer to satisfy the decree is also statutory. The provisions are of beneficial in nature and third party cannot be put to hardship due to battle between insurance company and the owner. A contract of insurance covering the third party risk must be viewed differently from a contract of insurance. Even if there are lapses under Section 149 of the Act, as per the doctrine of "pay and recover" insurance company is liable to pay compensation to claimants and recover the same from owner. As per Section 64VB of Insurance Act, 1938, the risk is assumed from the date of receipt of premium, irrespective of the date of insurance policy. This legal proposition has been laid down in 2011 ACJ 1728 by the High Court of Bombay after going through the judgments of Hon'ble Supreme Court. The legal position today is that an insurance policy comes into effect on the date of receipt of premium amount which is beneficial to the claimants who have lost their beloved ones and bread winners of their families.

THE STREET VENDORS (PROTECTION OF LIVELIHOOD AND REGULATION OF STREET VENDING) BILL, 2012

By

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India has over 10 million street vendors or hawkers, currently at the mercy of local administration. Thus the Union Minister of Urban Housing & Poverty Alleviation has

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