

STUDY MATERIAL

LL.M SEMESTER II

SUBJECT CODE – LM 106

SUBJECT NAME – INSURANCE LAW

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TOPIC NO – 8 INSURANCE AGAINST THIRD PARTY RISKS

1.Introduction

The Motor Vehicles Act¹, makes it mandatory for every vehicle moving on the public roads to have a valid license and a valid insurance.

According to the Oxford Dictionary² insurance is an arrangement by which a company or the state undertakes to provide a guarantee a compensation for specified loss, death, damage illness in return for a specified premium given by the insurer.

It is a contract between two parties called the insurer and the insured. The insurer undertakes to pay a sum of money to the insured in return for a consideration known as the premium in the event of happening of a specified uncertain event.

The first insurance company in India was formed in 1818 in Kolkata known as the Oriental Life Insurance Company. The Life Insurance Act was passed in 1912. The Indian Insurance Companies Act was passed in 1928. The Malhotra Committee formed in 1993 made some important recommendations to the Government of India. An Act was passed in 1999 called the Indian Regulatory and Development Authority Act, 1999 and in the year 2000 the Indian Regulatory and Development Authority was formed.

¹ The Motor Vehicles Act, 1988

²Available at: <https://www.lexico.com/en/definition/insurance>, last accessed on 6th April 2020.

2. Third Party Insurance-

There are two different kinds of insurance. One is first party insurance and the other one is third party liability insurance. In first party insurance claim there is a contract between the policy holder (insured) who is the first party and the insurance company (insurer) who is the second party. For example when a fire insurance policy is bought by a house owner, the house owner is the first party who can claim from the fire insurance company, which is the second party, in case the house owner's house catches fire. In a third party liability insurance policy the insurance company agrees to indemnify the person buying the policy in case of any suit against him by a third party.

3. Historical background-

Prior to 1930, there was no law of compulsory insurance in England which could give relief to a third party in case he suffers any loss. The party who suffered the loss used to sue the motorist directly for damages. Often the third party could recover nothing or very less due to the financial incapability of the vehicle owner. To meet such a situation the Third Parties' Rights Against Insurance Act was passed in 1930 in England. Now the third party could sue the insurer directly. A subsequent Act was passed known as the Road Traffic Act, 1930 which provided for compulsory insurance for motor vehicle owners. Another Act was passed in 1934 related to the third party insurance known as the Road Traffic Act, 1934. Chapter VIII of the Motor Vehicles Act, 1939 and Chapter XI of the Motor Vehicles Act, 1988 have been designed in the pattern of these English statutes related to third party which is evident from the report of the Motor Vehicles Insurance Committee constituted in 1936.

4. First and Second Parties in Insurance Against Third Party Risks-

In a third party insurance policy the insurance company agrees to indemnify the insured person if he is held liable for injuries done to another person (denoted as the third party). In third party insurance policy the insurance company is the first party, the insured is the second party and the person who is injured or who suffers death is the third party. The third party claims the damages. The insurer and the insured are the parties to the policy. The term 'third party' denotes everyone

whether it is a person walking on the road, or a person on another vehicle, or a person sitting on the same vehicle which is the subject matter of the policy. Under section 145(g) of the Motor Vehicles Act, 1988 Government is also falls under the term 'third party'.

5. 'Act Only' Cover-

Third party insurance is also known as 'act only' insurance. This kind of policy covers only damages done to the third party and not the damages done to the insurer's own vehicle. 'Act only' policies cover only the legal liability for the damage caused to the third party while using the vehicle of the insurer.

6. Beneficiary in a third party insurance-

The Motor Vehicles Act, 1988 mandatorily requires an 'act only' cover or third party insurance. The beneficiary of the policy are none of the parties to the contract, that is the insurance company and the insured but a third person. The policy covers the insured legal liability for bodily injury or death of the third party, or any kind of loss or damage to the third party. Damages can claimed by the victim under 'fault liability' or 'no fault liability of the Motor Vehicles Act, 1988.

Third party premium- The premiums in third party policies do not alter with the value of the insured vehicle because it is the legal liability which is insured. And in case of accident it is not possible to make an idea in advance of what liability would arise. The Insurance Regulatory and Development Authority of India decides the premium on the third party liability cover.

Third part insurance is mandatory. It protects a person from the legal liability of accidents. The Motor Vehicles Act, 1988 made it mandatory to have a third party insurance policy for every vehicle used at public places.

7. Salient Features of Third Party Insurance-

Following are the salient features of third party insurance:

- (a) In *G.Govindan v. New India Assurance Company Ltd.*³ it was stated by the Hon'ble Court that third party risks insurance is mandatory under the Motor Vehicles Act, 1988. Therefore, it is compulsory for all motor vehicles owner to have a third party insurance policy.
- (b) In third party insurance policy, the injuries and damages of a third party is covered, and not the injuries of the insured.
- (c) The beneficiary of a third party insurance policy is always a third party who has suffered loss or injuries and not the insured. The compensation is always paid to the third party directly by the insurance company. The insured does not get the money for which he was paying the premium.
- (d) The premiums in third party policies do not alter with the value of the insured vehicle because it is the legal liability which is insured. And in case of accident it is not possible to make an idea in advance of what liability would arise.
- (e) The Insurance Regulatory and Development Authority of India decide the premium on the third party liability cover.
- (f) Third party has to prove the fault of the insured and also the fact that the loss which he has suffered is due to the fault of the insured.
- (g) In third party insurance the third party needs the help of a lawyer.
- (h) The compensation to the accident victim is decided by the Motor Accident Claims Tribunal.
- (i) This kind of insurance is not popular with the insurance companies as the amount of compensation to be paid is not certain and can be huge.

8. Certain features of the third party liability insurance-

- (a) Liability of insured to be ascertained- In England An Act was passed in the year 1930 called the Third Parties (Rights Against Insurers) Act, 1930. One of the principles

³ (1999) 3 SCC 754

contained in the said Act is that third party who has suffered the loss cannot claim and get the money as compensation from the insurer unless the loss suffered is ascertained, established and determined.. this principle was explained in *Post Office v. Norwich Union Fire Insurance Society* by Lord Denning⁴.

(b) Liability of insured to insurer is disregarded- In *Murray v Legal And General Assurance Society Ltd.*⁵ Cumming Bruce J. explained this principle. This principle states that the third party beneficiary is not affected by the liability of the insured to the insurer. For example no set off is allowed for the unpaid premium. This is one of the privileges enjoyed by the third party.

(c) Defenses of insurer under third-party claim-

(d) Exclusion of liability to third party- this is a beneficial legislation. When a claim by a third party is made and established against the insured, the insurer has to pay the compensation to the third party. If the policy contains any clause which takes away the right of the third party to claim compensation, such clause is void. In *National Insurance Company Ltd. v Dalbir Kaur*⁶, the deceased was travelling as a gratuitous passenger in a vehicle. The insurer was held not liable to pay any compensation to such gratuitous passenger. It was held in *Geetha v G K Subhramanya*⁷ that the expression 'any person' under Section 147(1) do not include a 'gratuitous passenger' in an insured vehicle, the insurer would not be liable to pay compensation to such passenger.

(e) Defenses available against insured also available against third party- where the insurer has a defense available against the third party, the insurer does not have to pay to the claimant. In *Mc Cormick v National Motor And Accident Insurance Union Ltd, (1934)* the insured negligent driving caused the death of a person. The widow was awarded compensation against the insured. But the insured could not pay due to his insolvency. When the insurer company was sued for the compensation, it defended itself on the ground that the insured was previously convicted for dangerous driving, a material fact, was not disclosed to it. The defense of the insurance company was successful.

⁴ (1967) 2 QB 363; (1967) 1 Lloyd's Rep 216.

⁵ (1970) 2 QB 496; (1969) 2 Lloyd's Rep 405.

⁶ AIR 2008 (NOC) 2455 (P&H)

⁷ AIR 2008 (NOC) 2462 (KAR)

- (f) Third party rights against motor insurer's bureau- In *Hardy v Motor Insurer's Bureau(1968)*, a company's security officer was severely injured when he tried to stop a car which was being stolen by a man from the company's parking. The driver was uninsured. It was held that the Bureau was liable to the security officer to pay the compensation. Thus, the bureau was held liable for the personal injury caused to a third party by the intentional activity of a driver who is uninsured.
- (g) Coverage of third party insurance- third party insurance covers the following:
- (i) damage to property , but not the property of which the insured is the owner, or the trustee, or on which the insured has control over.
 - (ii) it covers bodily injury, or death of the third party, including any other person who was present on the vehicle.

9. Defenses Available to Insurer-

There are several defenses in the Act which are available to the insurer. But the terms of the policy must also be kept in mind while availing such defenses. The insurer must be given reasonable opportunity to substantiate his claim. The insurer can show that certain conditions specified in the policy have not been complied with. Under Section 149, the insurer is entitled to recover the compensation paid to the third party in case of violation of any of the conditions in the policy by the insured. The insurance companies are allowed to take the following defenses in case of third party insurance:

- (i) driver of the vehicle was not having a valid licence at the time of the mishap.
- (ii) the vehicle was used for racing or speed testing
- (iii) the vehicle was used for hire and reward not permit to ply such vehicle
- (iv) the insurer did not disclose all the material facts which makes the policy void.

10. Conclusion-

Third party insurance is justifiable. The third party who suffers loss has the right to be compensated by the person who causes the damage. If he cannot pay the third party directly, he should be paid indirectly through the insurance company. He should not be let off only on the ground that he is insolvent and is not in a position to pay for the damage suffered by the third party. If he owns a vehicle , he should also be able to pay for the loss caused to any other person through that vehicle.