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Claim Adjusters' Enforcement and Claimant's Liability: A Study of Car Insurance Cover and Policy in Perspective of the Motor Vehicle Insurance Act in India

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ABSTRACT

The study in this paper attempts to cover the Car Insurance claims determined by the coverage of insurance both in the form of add-on cover and in the form of comprehensive insurance policy. The insurance procedure covers the gamut of circumstances in the condition of liability without fault in certain cases. The role of claim adjusters on behalf of the Car Company with regard to legal regulations while considering replacement or compensation of punitive damages and accidental recovery claims is significant in respect of giving guarantee of utmost good faith to the insured policyholder, so to keep the service providing and marketing strategy to continue with the best sales ratio as well as with the most demanding status of a specific model or of the company's brand. In pursuance of the aforementioned market delivery strategy, the Motor Vehicle Insurance Act 1988 entails to vicarious enforcements, experiences and liability with effect to effective and ineffective evidences. Subsequently there are jurisdiction implications for insured or uninsured motorists. This paper will give a descriptive overview that how the pandora box of insurance policies try to create a safeguard for the insured by way of car insurance top-ups? How do the different types of motor insurance policies offer a paradoxical reality to the customers or buyers? How do the idealist buyers later face the provided safeguards with certain loopholes in the form of given strictures through the insurer of the car company? How do the legal representatives of the injured or deceased person seek no fault liability against the insurer and the insured? Or how does the third-party insurance claim increase the possibility of policyholder's liability if he causes an accident and leaves the injured unattended or unguided? Or in what manner does Motor Vehicle Insurance Act reduce policyholder's liability if he is not alive after the accident? If, it is so, then how do the legal representative or the claimant of the insured are leveraged to get the benefit of the insurance plan for the repair of the damages or replacement?

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I. INTRODUCTION

Motor Car Insurance Policy coverage is based on two different types of claims. They are – the comprehensive car insurance policy and zero depreciation car insurance cover. The nature of both types varies on account of one is available in the form of an add-on-cover, while the other is a sort of Insurance policy available in the form of a stand-alone car insurance policy. Both are the potential assets of car companies' plans and policies concerning car insurance to procure better maintenance and care and to stay in mint conditions if while verification, on account of the accident recovery claims or while approaching to car company as legal representative either as a surviving claimant or as a customer to avail benefits of the insurance. The higher the car insurance premium, the more vicarious reinforcement is liable to be in operant conditioning with regard to purchaser's awareness and company insurance provides plans and policy to have damage cover in various forms. The point is – does comprehensive insurance plan for damages familiarizes buyers about auto-secure private car package policy? If it is handed over to a buyer while the purchase of a new car – does the authorised service centre ask the buyer to produce the insurance benefit claims when the automobile is for servicing and its overhauling?

In case, the insurer after the purchase, intends to modify or wishes to do alterations, then too vicarious reinforcement and identification is leveraged in the add-on cover plan of both zero-depreciation and comprehensive policy besides being in regulatory acts of Motor Vehicle Act especially in terms of covered loss.[1]

Promising to compensate insured guaranteed interest of the policy holder – in case if the insurable interest claims are determined per se the claim adjuster's or insurer's intent while doing registration and car insurance, which implicates also a sort of an intent of agreement, but on insurance papers it is manifested as insurance company's liability towards the insured buyer of the motor vehicle, but the same when at the time of reality of claims' acquisition can be under interpretation as according to claims adjusters' database that viciously manages vicarious reinforcement of offering opportunities for auto-security while purchasing, besides in the shadow of offers, company's top-ups or top-offs projects on one hand actual idealist sense, demarking the reality of benefits, slapping the customers' imagined company's offers, transacting the untold truths of service delivery. Negotiating the benefits as an HR of not

only insurer company, but also of the Insurance and Development Authority of India (IRDA)[2]

As an example car insurance plans in actual sense becomes the pay-off or the medium of money heist by the insurance agent's suggestions at three levels, which show their different face – first while purchasing a new car of higher price, quality or of better model or medium brand; second while following a process of registration and insurance of car and third when vicarious reinforcements of car insurance premium undergo a kind of a legal liability arising from damage either by the owner or by the owner's driver or on account of the damages by calamity, fire, theft etc or due to unexpected disaster or occurrence of unexpected freak or accidents etc.

To understand the coverage and protection plans of car insurance extended in the form of accidental damages – looking to the hardware of the car or body of the car is completely a different but direct settlement per se the conditions, pre-requisites and paper work as evidences. In this case motor insurance contracts are subjected to the basic principles liable to property and liability of insurance both in respect of punitive damages and from the point of accidental recovery claims.

The investigation in this sense will be taken up in the chosen area of study in context of understanding of the facts – that is – if an insured as a purchaser sustains an injury, then how far the adjudication of regulatory authorities such as MACT settles the claimant's justification to provide the insurance claim in case of no-fault liability or in case of strict or absolute liability? And how the company that sold the motor vehicle compensates vicarious experience of an injured claimant as a legal representative?

II. PART – I

India Code: The Motor Vehicle Act

As per the E-Book titled “Bharatmala - Optimizing the Efficiency of the Movement” – Move Towards New India, Ensuring Ease of Living – After analysing the status of road conditions and road safety, the government has focused on the presence of congestion points (which can be a point of hard driving expertise or it necessitates the understanding of conditions of highway roads on which heavy transportation motor vehicles ply or the travellers' taxies ply and if they met with an accident, the insurance claims do mention often the condition of the available infrastructure with regard to road safety). There is a presence of Multiple points of local congestion even on already developed corridors, driven by the interaction of the local city traffic with the highway traffic, which leads to drop in vehicular speed, higher accidents on highways

In order to design a lack of accident response infrastructure, it has been understood to create a need to proactively identify areas on national highways, economic corridors, Inter-corridors for feeder routes to facilitate less congestion within city, in order to save locations of traffic congestions that are prone to accidents and swiftly design and implement interventions.

Resolution of Blackspots Road safety audits were conducted for 32,971 km till FY20 and an additional length of 40,000 km is targeted till FY24. Consequently, 5785 blackspots were identified for removal and rectification as a permanent measure to reduce road accidents. Identification of prevailing conditions of travel and transportation is also a part of foregrounding the regulations for obtaining motor vehicle license.[3]

For the case of commuters plying on roads in their vehicles, motor vehicle act 1988 in their clause referring to Fatal Accident Act 1955 grants the right to the injured or deceased the privilege to sue claim from the insurer for acquiring the insured claim after the thorough investigative conditions are laid by the lawyer of the insured (as per the Fatal Accident Act 1955 from the person committing negligence) before the insurer and the prosecutor deputed from the Motor Accidents Claim Tribunal. The origin of the claimant's right to be insured and to approach the insurance company for owning with safety the vehicle – this legal situation got its recognition by the act of 1939 to consolidate the law relating to the Motor Vehicles. – the concepts like third part insurance, unlimited liability of the insurance companies, no-fault liability got introduced. With the advent of technology and increasing traffic on road, it has been felt to come up with strict provisions, road safety and compensations to the victims or victim either that have met with an accident or has not committed an accident, but accident happened, subsequent to that has been a party for the insurer as well as on account of being insured due to being a driver, or the owner. These situations led to the introduction of Motor Vehicle Act 1988. The aim was to authorise the possession and the safe use of both commercial and personal vehicles in the country, besides to promote automobile sector in view of changing pace occurring in the motor vehicle technology. Secondly to take care of road safety standards for transportation of hazardous and explosive materials for, to lay down the effective ways of tracking down traffic offenders, to lay down the strict procedure for granting the driving licence or the renewal of licences, to lay down the effective standard for standardised pollution control devices. An overview for a layman as a driver or the owner of the motor vehicle, the rules and conditions to get licence as per the existing India Code: Motor Vehicle Act 1988 is discussed below:

1. It has been mandatory to complete 8 hours for theory and 21 hours for practical driving learning to earn driving certificate. For medium and heavy motor vehicles, the training

duration will be 38 hours and must be completed within 6 weeks of starting. 8 hours for theory and 31 hours for practical classes. In section 19 of the Amendment Act of Motor Vehicle 2019 - "Provided that the driving licence shall be returned to the holder at the end of the period of disqualification only if he successfully completes the driver refresher training course." [4] (The Gazette of India Ordinary, Section – 1, sub-section 2b, page -5)

2. Eligibility for driving licence in India - The applicant should be at least 18 years old. The applicant should have completed 8th standard. The applicant must be at least 18 years old (in some states, the minimum age limit is 20 years). The applicant must be conversant with traffic regulations and rules. Central Government may prescribe, if the person obtaining the licence, either originally or on renewal thereof,— (i) has not attained the age of thirty years on the date of issue or, renewal thereof, be effective until the date on which such person attains the age of forty years; or (ii) has attained the age of thirty years but has not attained the age of fifty years on the date of issue or, renewal thereof, be effective for a period of ten years from the date of such issue or renewal; or (iii) has attained the age of fifty years but has not attained the age of fifty-five years on the date of issue or, renewal thereof, be effective until the date on which such person attains the age of sixty years; or (iv) has attained the age of fifty-five years on the date of issue or as the case may be, renewal thereof, be effective for a period of five years from the date of such issue or renewal." [5] (Ibid., Part -II, In section 14 of the principal Act, in sub-section (2),—clause b. pg.4)

3. New rules about driving licence are applicable from July 2021 -2022. One can get a driving licence based on the type of vehicle one will drive. According to the new rules for driving license will come into effect from 1st July 2022. It allows only the operation of private driving centres, which will be either by the central government or by the transport authority of the state. The validity of training centres will be 5 years. After that, a renewal will be required. A separate industry could be created as the result of the government's action. Any person who has passed the exam at any driving training centre which is state accredited will be exempted from taking the test for applying for DL at RTO. The only basis for the license will be a private driver training centre certificate. The following points are checked by the state transport authority before attaining accreditation by the driving institute -

4. The effect of the amendment made by virtue of Act No'54/1994 w.e.f. 14.11.1994 white substituting clauses (e) to (h) of section 10(2) which contained "medium goods vehicle" in section 10(2)(e), medium passenger motor vehicles in section 10(2)(f), heavy goods vehicle in section 10(2)(g) and heavy passenger motor vehicles in section 10(2)(h) with expression

transport vehicle as substituted in section 10(2)(e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of section 10(2)(d) and section Z (41) of the Act i.e., light motor vehicle. As per the new rules about driving license, one cannot have more than one driving license. Having more than one license is an offence. The License can be obtained on the basis of the type of vehicle. There are two types of DLs, viz. Personal Driver's License and Perpetual Driver's License and Commercial Driving License. An international driving license is also there for driving in other countries. [6]

Personal Driver's License & Perpetual Driver's License

License Class	Type of Vehicle
MC EX50CC	LMVs with 50CC capacity or more and gear. Ex- motorcycle, car, etc.
M/CYCL.WG	All motorcycles (with or without gear).
MC 50CC	Motorcycles with engine capacity of 50 CC or less.
LMV-NT	LMVs for non-transport purposes
MCWOG/FVG	Motorcycles without gear & any engine capacity. Ex- scooters and mopeds.

Commercial Driving License

License Class	Type of Vehicle
HGMV	Heavy Goods Motor Vehicle
MGV	Medium Goods Vehicle
Trailer	Heavy Trailer License
HMV	Heavy Motor Vehicles
LMV	Motorcars, jeeps, taxis & delivery vans

HPMV/HTV	Heavy Passenger Motor Vehicle/ Heavy Transport Vehicle
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Ministry of Road Transport and Highways, Govt. of India. No. RT- 1 1021/4412017-MVL. the judgment dated 03-07-2017 of the Hon'ble supreme Court in Civil Appeal No. 5826 of 2011 - Mukund Devagan v/s Oriental Insurance Company and Others in the matter of issue of driving licence for light motor vehicles. 16th April 2018.[7]

According to the Central Government Motor Vehicle Act of 1988 in the section

183 the rules regarding the Driving at excessive speed, etc. that are given below in a way a principle of evidence in case of either no-fault liability or beyond doubt matter, yet need to be in consideration while the investigation of the mechanical device goes on to seek claim by the insured in case of responsible to cause any harm or not and in respect of the jurisdiction applicable viz-a -viz road-safety terms and conditions[8]

1. Whoever drives a motor vehicle in contravention of the speed limits referred to in section 112 shall be punishable with fine which may extend to four hundred rupees, or, if having been previously convicted of an offence under this sub-section is again convicted of an offence under this sub-section, with fine which may extend to one thousand rupees.[9]

2. Whoever causes any person who is employed by him or is subject to his control in driving to drive a motor vehicle in contravention of the speed limits referred to in section 112 shall be punishable with fine which may extend to three hundred rupees, or, if having been previously convicted of an offence under this sub-section, is again convicted of an offence under this sub- section, with fine which may extend to five hundred rupees.

3. No person shall be convicted of an offence punishable under sub-section (1) solely on the evidence of one witness to the effect that in the opinion of the witness such person was driving at a speed which was unlawful, unless that opinion is shown to be based on an estimate obtained by the use of some mechanical device. [10]

4. The publication of a time table under which or the giving of any direction that any journey or part of a journey is to be completed within a specified time shall, if in the opinion of the Court it is not practicable in the circumstances of the case for that journey or part of a journey to be completed in the specified time without contravening the speed limits referred to in section 112 be prima facie evidence that the person who published the time table or gave the direction has committed an offence punishable under sub-section (2). [11]

III. PART – 2

The motor vehicles' insurance, plans and policies - as illustrated by insurers (claim adjuster) and by court (designated regulatory bodies)

The Motor Vehicles Act 1988 mandates that all the vehicles running on the Indian roads should be insured. The motor insurance can be for cars, 2 wheelers vehicle or for commercial vehicle. There are two types of motor insurance - Third party liability cover and comprehensive motor insurance policy. Third party cover policy means that the first party is the insurer, second is insured and the third is injured. All claims then liable to be paid by the insurance company from where the buyer of the car gets insurance policy or if purchases the motor insurance policy for his/her purchased vehicle from any other motor vehicle insurance company. The other policy is comprehensive motor insurance policy that can save insured person or the purchaser of the automobile from the loss/theft/ damages etc. and levies liability upon the insurer to pay back the claim for the loss. According to the new insurance policy 1 September 2018 rules, insurance is now valid for three years.

Different types of motor insurance policies- According to risk covered by an insurance contract different policies are issued. Generally following types of insurance policies are issued under motor insurance. (1) Act Only Policies (2) Third party Only (3) Comprehensive Policy. [12]

Act Only Policies – Purpose and Scope of the Policy

It is Compulsory in nature. It is also known as Act Liability Insurance. A motor vehicle is required by law to be insured in respect of the user's liability for death, bodily injury or damage to property of third party. These kinds of insurance contracts are based on indemnity. and only cover the damage, and the whole insurance amount is not given every time.[13] All owners of vehicles who ply with the motor vehicle must abide by the motor vehicle act. Owner is bound to have the insurance. The motor vehicle act compels the insured to cover risk to life and property of the employees' engagement in vehicles as a driver or attendant. These risks are covered under workmen's compensation act 1923. In India both the risk of bodily injury to third party and to employees can be covered under one policy.

1.The Company shall not be liable in respect of any claim arising whilst the vehicle insured herein (a) Being used otherwise than in accordance with the 'Limitations as to Use' or (b) Being driven by or is for the purpose of being driven by him/her in the charge of any person other than a Driver as stated in the Driver's Clause.

2. The Company shall not be liable in respect of any claim arising out of contractual liability.
3. Except so far as is necessary to meet the requirements of the Motor Vehicles Act, the Company shall not be liable in respect of death arising out of and in the course of employment of a person in the employment of the Insured or in the employment of any person who is indemnified under this Policy or bodily injury sustained by such person arising out of and in the course of such employment.
4. Except so far as is necessary to meet the requirements of the Motor Vehicles Act, the Company shall not be liable in respect of death or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in or upon or entering or mounting or alighting from the motor vehicle at the time of the occurrence of the event out of which any claim arises.
5. The Company shall not be liable in respect of any liability directly or indirectly or proximately or remotely occasioned by contributed to buy or traceable to or arising out of or in connection with war, invasion, the act of foreign enemies, hostilities or warlike operations (whether before or after declaration of war) civil war, mutiny rebellion, military or usurped power or by any direct or indirect consequence of any of the said occurrences and in the event of any claim hereunder the Insured shall prove that the accidental loss damage and/or liability arose independently of and was in no way connected with or occasioned by or contributed to by or traceable to any of the said occurrences or any consequences thereof and in default of such proof, the Company shall not be liable to make any payment in respect of such a claim.
6. The Company shall not be liable in respect of any liability directly or indirectly caused by or contributed to buy or arising from nuclear weapons material.[14]

Third Party Policy

This policy covers all risk mentioned in motor vehicle act of 1988. If one takes the policy, he will get compensation from insurer up to the value of insurance, which may be higher than the minimum amount prescribed under the act. The insurer will pay all sums, liability, cost and expenses for which insured become liable. Two different covers are available for private cars – (1) fire, theft (2) third party and fire/ theft. Motor third-party insurance or third-party liability cover, which is sometimes also referred to as 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 (the car owner and the insurance company). The policy does not provide any benefit to the insured. However, it covers the insured's legal liability for death/disability of third-party loss or damage

to the third-party property. [15]

Comprehensive Policy - This policy covers all risk to be insured arising out of legal liability that is to the third parties under motor vehicle insurance act. It covers loss and damage to the vehicle. Comprehensive means all included in one. But in practice all risks are not covered, so it is known as standard comprehensive policy form. Following risks are covered – (1) damage to car and parts of body (2) Removal charge for repairs (3) third part liabilities (4) cost & expenses incurred with risk (5) medical expenses.

Policy periods for various types of covers: The policy periods for various types of policies are as under: - Policy Type Period – (a) Own Damage Cover (b) Third Party Cover

- Package Policy

- 1 year (for all vehicles except new two wheelers and new Private Cars)

- or 2/3 years (for old Two-Wheeler)

- 1 year (for all vehicles except new two wheelers and new Private Cars)

- Or 2/3 years (for old Two Wheeler)

- Liability Only Policy

- NA 1 year (for all vehicles except new two wheelers and new Private Cars)

- or 3 years (for new Private Car) or 5 years (for new Two Wheeler)

- Or 2/3 years (for old Two Wheeler)

- Bundled Policy

- 1 year (for new Private Cars and new Two Wheelers)

- 3 year (for new Private Cars)

- 5 year (for new Two Wheeler)

- Standalone Own Damage

- 1 year (for private car and two wheelers (both new and old) NA

- 2.5 Basis of Sum Insured (SI):

- 2.5.1 *For Own Damage*: The Sum Insured under a Motor Insurance policy reflects the value of the motor vehicle and is determined based on the concept known as Insured's Declared Value. Insured's Declared Value is the value arrived at based on the Manufacturer's listed selling price and depreciation based on the Age of the Vehicle.

- 2.5.2 *For Third Party*: There is no specific SI for the death/bodily injury to Third Party, liability for the same is decided by the law as per requirements of Motor Vehicles Act, 1988 as amended from time to time. However, for damage to Third Party property, one can opt for SI of Rs. 7.5 lakh or Rs. 6000.

- 2.5.3 *Compulsory Personal Accident for Owner- Driver*: Sum Insured for this cover is Rs. 15 lakh by default. However, the insured can opt for lower Sum Insured, if owner/driver is already having a 24-hour Personal Accident cover against Death and Permanent Disability (Total and Partial).

- *Third Party Liability insurance* is mandatory for all vehicles plying on public roads in India. This covers Liability for injuries and damages to others that you are responsible for. In addition, it is prudent to cover loss or damages to the vehicle itself by way of a Comprehensive/Package policy or a Bundled Policy or a Standalone Own Damage Policy in addition to your Liability Only Policy, which covers both "Liability" as well as "Own damage" to Insured vehicle. Liability Only cover is also known as Act Only cover.[16]

Conditions for Motor Vehicle Policy and Settlement of Claim [17]

Notice of Accident, Supply for Information, keeping the vehicle in good condition, utmost good faith, arbitration clause, renewal of policy, policy information and lastly cancellation of policy.

Settlement of Claims

1. Preliminary Stage – (a) Notice for loss – send by insured to insurer (b) Insurer Checks – policy is enforced or lapsed 9c) The loss is entered in claim register (d) A claim form is issued to insured client for completion and return

2. Assessment – Independent automobile surveyors are assigned work of assessing the cause and extent of loss. They are supplied a copy of policy, the claim form and repairs' estimate. They inspect the damage of vehicle, discuss the cost of repair and submit the survey report to insurer.

3. Settlement – The survey report is the basis of claim settlement. The report is examined and settlement is done according to the recommendations in the report. Usual practice – repairs, repairer receives – letter of repair – from the insurer. Finally, the claim is settled by the insurer.

Basic Principles of Motor Insurance [18] – Motor insurance contracts are subject to the basic principles applicable to property and liability insurance in general.

(1) Utmost Good Faith between the insurer and the insured (MVA 19) - Contract of Insurance are governed by the doctrine of Utmost Good faith. The doctrine imposes legal obligations on the proposer to disclose material facts to the insurers. The use of proposal forms is compulsory and the declaration clause in the form converts the common law duty into a contractual duty of utmost good faith. The principle of utmost good faith holds good as the contract is between the insurer and the insured.

(2) Insurable interest - (a) Insured (b) other than insured (c) Financer (d) Motor Trader - 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 incurs that liability under law through the use of the vehicle. Therefore, the insured has insurable interest, which entitles him to insure the vehicle against damage and liability risk.

(3) Indemnity - Insurance contracts are contracts of indemnity, that is to say, the insured is placed after loss, as far as possible, in the same position as he was immediately before the loss. This principle ensures that the insured does not make a profit out of his loss. In motor insurance principle of Indemnity is of two types: one for Total Loss and Constructive Total Loss (CTL) and theft claims and the other for repairs claims.

For TL/CTL/Theft claims the principle of insured's Declared Value (IDV) is applied. IDV does not take into consideration market value or depreciated price. It is the sum insured agreed at the beginning of the policy between insurer and the insured. It is based on price or new vehicle at the beginning of the policy period less depreciation at the agreed rates. IDV remains constant during policy period.

In case of repair claims the Indemnity is cost of parts less depreciation taking into consideration the age of the vehicle. The depreciation table for the repairs is stated in the policy which is different from the one for TL/CTL claims.

In respect of third-party liability, the actual damages awarded are indemnified subject to the limits of liability, if any, specified in the policy. Indemnity is also available for legal costs.

Under Section 146 of the M.V. Act 1988, 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 requirement of the Act. The owner insured may authorize the persons to drive his vehicle. In such cases, though the owner insured has, strictly speaking no insurable interest in any third-party liability, he is deemed to act as an agent in arranging the indemnity on behalf of such other persons who may drive the vehicle and incur liability. Otherwise, the injured third parties will have no recourse to recover damages. [19]

(4) Subrogation and Contribution - Subrogation is the transfer of rights from the insured to the insurer when the loss or damage to the vehicle is caused by the negligence of another person. Insurers exercise the right to cover the loss from the person responsible. Under common law subrogation operates only after the claim is paid.

A policy condition, however, provides for subrogation before the payment of claim. Subrogation usually arises when there is a collision between two vehicles, one, which is responsible for the accident. In practice, however, subrogation is modified by agreements between insurers, e.g. knock for knock agreement. Contribution arises when there is double insurance, that is, when the same vehicle is insured under two policies. According to the policy condition the loss is shared pro-rata between the two insurers.

(5) Proximate Cause - 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 any of the insured perils. The doctrine also applies to third party claims. The third-party injury or damage must be proximately caused by the use of the vehicle by or on the instructions of the insured for which he is held legally liable to pay damages. [20]

Case laws: -

1. Mr. Nitinbhai M Vekaria V/s Bharti AXA General Insurance Co. Ltd. Complaint No. AHD-G-007- 1617- 1338 Policy No. FPV/I2137489/71/02/003251. Insurance Ombudsman Date of award: 21/03/2017 - Insured cannot be penalised for breach by insurance agent – Bharati Axa General directed to pay Private car claim. (<https://www.bimabazaar.com/tag/private-car-comprehensive-insurance-policy>)

2. Mr. Haresh B Bhavsar V/s Reliance General Insurance Co. Ltd Complaint No. AHD-G-035- 1617-0427 Policy No. 1602552311003016 Insurance Ombudsman Date of award: 19/09/2016 - Reliance General Insurance directed to pay motor insurance claim even if policy was not transferred in legal heirs' name. [21]

IV. PART – 3

Policyholder's Liability in the Jurisdiction of Motor Vehicle Insurance Act of India

The Role of Motor Accident Claims Tribunal –

At district level MACT are available to report to high court, in order to return the third party insured claim to the appellant who as a legal representative or as the surviving heir of the deceased seek MACT for filing a petition with the help of an advocate. He needs to have a FIR copy showing facts and evidences of personal as well as financial loss that has been

incurred while he met with an accident. The legal representative as a claimant should align with the motor vehicle insurance company by adding insurer as a party while submitting a petition in the Tribunal Court, so that accused as respondent can be approached to pay back. The presiding officer of MACT issued notice to the Insurance company and the accused (respondent). The accused respondent is the person who has caused accident, an injury while driving. [22]

According to the National Records Bureau, hit and run cases claimed 45,000 lives in 2020. The road transport ministry has notified the rules, which is set to ensure quick disbursement of the compensation to the victims' family. [23]

The rules specify that the victims of hit and run cases and their family members must get the compensation in less than three months and the payment is transferred online. The victim of the hit and run accident or his legal representative must file an application to the claim's enquiry officer in the respective Taluka. The injured party/victim is free to appoint his/her family member or even an agent as a legal representative. Section 161, as amended by the Motor Vehicle Act 2019, increased the compensation for death in hit-and-run cases from 25,000 to Rs. 2 Lakhs. In case of grievous injuries, the compensation was enhanced from Rs. 12,500 to Rs. 50,000. [24]

The Guidelines for settlement of claims for compensation for death or permanent disability arising from accidents faced by members of general public and certain categories of persons in the department of economic affairs and autonomous organisations and public sector undertakings under its control govern the settlement of compensation claims arising out of accidents resulting into loss of life or permanent disability. [25]

Procedure of settlements of claims in respect of compensation is that the victim or dependent would make an application within a period of 90 days of the accident to the designated officer of MACT under whose jurisdiction the accident had occurred. The application should be accompanied by the following documents: (1) FIR copy (2) Proof of applicant's relation with the victim/dependency certificate (3) Death Certificate of the deceased (4) heirs surviving – their data (5) minors – as survivors – their data (6) all appropriate heads/survivors/heirs/kins/legal representatives as claimants can claim accident insurance claim through filing an application to MACT with the help of a lawyer. It is a conducive process, but this way helps to get the claim definitely in time. Besides the above mentioned necessary identification documents also takes note of FIR location, vehicle number while the investigation is processed, a kind of traffic penalty (challan) is also submitted in the court against the accused claimants' claims which can be challenged in court through an application in three contexts – the place where

accident happens, the survivors or kins of the victim, and the most important the driver driving the car or the car's actual owner as accused party, and the insurance company as the insuree of the third party for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of someone or bodily injury to a person/s arising out of the use of motor vehicles or damages to any property (animate or inanimate) of a third party or arising due to theft/fire/disaster etc. [28]

The maximum liability amount that shall be paid in each case shall be such as may be prescribed by the Central government. In all cases specified in clause (a) of the sub-section (3) when the claim of such person becomes liable, where amount has been paid out of 164B Motor Vehicle Accident Fund (constituted by the Central Government (the balance of the fund created under scheme framed under section 163, as it stood immediately before the commencement of the Motor Vehicles (Amendment) Act 2019) to any person, the same amount shall be deductible from the claim received by such person from the insurance company. [29]

Conditions and Criticality of Compensation Claims –

With regard to injured claim – the victim if faces severe injury, has the right to have all expenses for hospitalisation, to have attendant, medication expenses minimum of the amount 50,000/- INR for serious injury and 10, 000/- INR for minor injury.

Accidental deaths – Heirs or survivors of the deceased can submit application to MACT through an advocate to claim hospital expenses, retrieving the deceased body from police custody, funeral expenses etc.

Supreme Court on Accidental Claim Case – Sri Ravi @ Ravindra (appellant) from Mandya) vs Thammanna on 25 March 202, authored by N.S.Gowda (indiakannon.org) before the honourable justice N.S.Sanjay Gowda, M.F.A. No. 6863/2014, C/W M.F.A. No. 1541/2015 (MV – I) vide order dated 21-01-2015, Notice to R -1 (Thammanna of the place Mandya) is dispensed with Sri. O.Mahesh, Adv. For R – 2 – The Branch manager, United India Insurance Ltd. Mandya) – The appeal was filed under section 173 (1) of motor vehicle act praying to modify judgement and award passed by the learned senior civil judge and motor accidental claims tribunal, Maddur in MVC No. 1282/2-12 dated 16-7 – 2014, further to request to enhance the compensation as claimed in the claim petition by allowing this appeal in the interest of justice and equity.

Another appeal was filed by Respondent – 1 of the same case the Branch Manager of United India Insurance, Mandya (Bangalore) against the appellant Ravindra of Mandya in Bangalore under section 173(1) of MV Act against the judgement and award dated 16-7-2014 passed in MVC No. 1282/2012 on the file of the Senior Judge and MACT, Maddur, awarding compensation of Rs.

2,18,680/- INR with interest @ 6% P.A. on Rs. 2,18,680 from the date of petition till realization.

In the above referred case-judgement the basic fact that has come out that the policyholder's liability becomes challengeable concerning the rules of Motor Vehicle Act, Prima Facie Evidences, Rule of Law in respect of Motor Vehicle Insurance that are assured in the utmost good faith assured to the insured, in case of the third-party concerns when – (1) the claimant informed the Medical Officer within an hour of the occurrence of the accident that he had suffered a road traffic accident. This information was reiterated by the claimant when he was shifted to the Government Hospital. These two factors by themselves establish that a road traffic accident had occurred resulting in injuries to the claimant. (b) The assertion that the police had investigated the complaint and lodged a 'B' report and therefore, the version of the claimant is to be disregarded cannot be accepted. (c) As noticed above, the Insurance Company has an obligation to prove the accident or disprove the accident in a manner acceptable in law. The mere production of a 'B' report cannot lead to an inference that no accident occurred. The Insurance Company ought to have produced independent evidence to establish that the claimant had a fall from the tree and mere reliance on 'B' report which stated that the claimant had admitted as he had fallen from a tree cannot be accepted. [30]

In order to find gaps in respect of disposability of the ownership of vehicle or misusing of contract in motor vehicle insurance claims or failing to compensate amputation liability claims, while submitting proofs of admissions and responsibility – especially in context of claim compensations – in which the conflict of interest due to the onus of economic burden to be borne, it is important to question the evidences that form certain kind of mis-notions among different parties involved either to streamline or to manipulate the gaps. [31]

These have three forms –

1. The Compensation in case of vicarious liability – Vicarious liability is the legal responsibility for another person's mistake. Small business owners can be held financially accountable for the negligence of their employees, agents or independent contractors. [32] The constituents of vicarious liability are: (1) There must be a relationship of a certain kind. (2) The wrongful act must be related to the relationship in a certain way. Accident by Uninsured Vehicle, MACT Claim, Vehicle not insured (Section 149) – If the vehicle is not insured, then how to get the claim compensation in an accident case. The filing procedure in MACT by the uninsured motorist, to retrieve claim from the insurance as third party claim in case of the motorist's bodily injury. When a road accident happens to a person, a claim petition can be made to the MACT against the driver, owner and insurance company of

vehicle whose negligence caused the accident, in which an insurance claim is usually made from the insurance company of the vehicle causing accident that vehicle has not been insured.

2. The default of negligence incurs strict liability – For example allowing unauthorised persons to drive vehicles, that is disposability of vehicle is dubious —Whoever, being the owner or person in charge of a motor vehicle, causes or permits, any other person who does not satisfy the provisions of section 3 or section 4 to drive the vehicle shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both. [33]

Case Law

In the case Kerala High Court of Ayyappan Pillai vs Thomas M. on 3rd March, 2022 - Before the Tribunal, the 1st respondent did not file any written statement. The 2nd respondent remained absent and he was set ex parte. The 3rd respondent insurer of the scooter filed written statement contending that the accident occurred on account of the negligence of the deceased. The insurer contended further that the claimants are not entitled to get compensation under Section 163A of the Motor Vehicles Act. The insured of the scooter was one Sasidharan Nair. There was no transfer of ownership in favour of the 2nd respondent. Neither the 1st respondent nor the 2nd respondent had shown any interest in transferring the ownership of the scooter. The deceased did not have a valid driving licence. The compensation claimed is highly excessive.

Case Law

In another case referred here to elaborate the same is Under the law as it is, 21 Claims Tribunal can pass an award with regard to payment of just compensation only after finding that the accident of the nature specified in sub--section (1) of Section 110 was the result of the negligence on the part of the driver or owner of the vehicle. [34] Since this case was decided, the Supreme Court has been suggesting with some persistence that the Motor Vehicles Act should be amended so as to incorporate in it the principle of "no fault liability" in road accidents.[35] (Concord Insurance Company Vs. Nirmla Devi 1979 (3) S.C.R. 694; Rattan Singh Vs. State of Punjab S.C.W.R. d. 10/1/1980 Vol. 35, Part 1, page 29).

3. Amputation Compensation Claims incurs no-fault liability [36]- which is claimed from the insurer on the insured vehicle due to occurrence of non-pecuniary loss that is hardships, disappointment, frustration, mental stress, dejection and unhappiness in future life etc. and also causing Less contributory negligence Disability resulting in loss of earning capacity. [37]

What requires to be assessed by the Motor Accident Claim Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in term of money, to arrive at the future loss of earning (by applying the standard multiplier method used to determine loss of dependency). We may, however, note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation.

Case law

In judgement of the case Delhi District Court – Raj Kumar vs Mahroof & Ors. On 6 August, 2018 - It was alleged that offending truck was being driven by respondent no. 1 and it was registered in the name of respondent no.2 whereas same was insured with respondent no.3. Claim suit was contested by respondent no.3 by filing its written statement wherein it was admitted that the offending vehicle was duly insured with the company, but took the plea that since the truck was being driven without valid driving licence, insurance company is not liable to pay any compensation. (i) Respondent no. 1 & 2 did not contest the claim suit; accordingly, they were proceeded ex-parate vide order dated 02. 12.2015. LIABILITY TO PAY: -Though counsel for insurance company in the written statement took a plea that the offending truck was being driven without a valid driving licence, but during inquiry, insurance company failed to prove this plea. (i) On the contrary, R3W1 official from Transport Authority testified that the licence was issued in favour of respondent and it was valid on the day of accident. (ii) In view of above, being the driver, owner and insurer of the offending vehicle, respondent no. 1, 2 and 3 shall be jointly and severally liable to pay compensation to the petitioner. (iii) In view of above, Issue No.2 is decided in favour of petitioner and against the respondents.

V. CONCLUSION

The illustration drawn from the Indian Evidence Act 1872 quite aptly describes how filing procedure, trial and question of responsibility and the agency to depend upon to seek insurance claims is quite invariably dependent on the admissions by persons whose position must be proved as against party to suit —Statements made by persons whose position or liability, it is necessary to prove as against any party to the suit, are admissions, if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them

occupies such position or is subject to such liability. Illustration A undertakes to collect rents for B. B sues A for not collecting rent due from C to B. A denies that rent was due from C to B. A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

Proof of admissions against persons making them, and by or on their behalf —Admissions are relevant and may be proved as against the person who makes them, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases: —

An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32.

An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.
