

LEGAL LOCK JOURNAL
2583-0384

VOLUME 2 || ISSUE 4

2023

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INSURANCE OF MOTOR VEHICLES AGAINST THIRD PARTY RISKS

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ABSTRACT:

In the article, we will see how the motor vehicles is against the third party. In the motor vehicles act, third-party insurance is a requirement for all vehicle owners. It only covers your legal responsibility for any harm you might inflict on another person while operating your car, including physical harm, wrongful death, and property damage. The cost of repairing damage to your car is not covered by TP protection.

This research paper attempts to analyze various contours of third-party risks and liabilities in India, with reference to the related provisions under the Motor Vehicle Act, of 1939.the policy does not provide any benefit to the insured, however it covers the insured legal liability for death/disability of third party loss or damage to third party.

The article will cover the motor third-party insurance, the extent of liability of the insurer, duty to disclose and some cases which was mentioned below:

National India Insurance vs Baljit Kaur

Madras Motor and general insurance ltd vs Marathi Ammal

S. Iyyapan vs India insurance company and others.

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1. INTRODUCTION:

Insurance is a contract between two persons, an insurer and insured; it is where one person indemnifies the other on payment of consideration which is the premium in the event of happening of uncertain events. There are many kinds of insurances and motor vehicles insurance is one of them and is governed by the Motor Vehicles act 1939 was amended in 1988. Road accidents are now more likely given the growth in the number of vehicles on the road. The injured parties- peddlers, rickshaw drivers, and other automobiles owners who incurred damage-sue the negligent driver. However, in many instance, the driver of the at-fault car is either unable or unwilling to pay compensation to the injured, which worsens the situation and leaves the victim defenceless and unable to recuperate. In order to address this issue , England developed the requirement for third party insurance. The Indian legal system was developed in the style of numerous English statutes. Now, third party insurance is required for all vehicles operating on public roads so that the insurance provider can defend the insured against the wounded person's allegations. This was done to ensure that the victim of the accident would not suffer if the driver refused to compensate them. In certain circumstances, the insurer defends the insured against third- party liability. Only until the insured's liability is established does the insurer become responsible for payment.

2. HISTORY OF MOTOR VEHICLES ACT:

The “India Motor Vehicles Act, 1914” was a central legislation passed and applicable in British India. Some stated that this suit should modify after that they amended the MOTOR VEHICLES were first act introduced in India towards the end of the 19th century, and the 1914 act was the first legislation to regulate their use. In 1988 they introduced third-party insurance for two-wheelers and four-wheelers became mandatory in the country.

2.1 THIRD- PARTY MEANING

Third-party insurance is compulsory for all vehicle owners as per the motor vehicles act. It has legal liability for damage caused to third parties. This has been clearly stated in section 146(1) of the motor vehicles act,1988.

2.2 BACKGROUND OF THIRD-PARTY RISKS UNDER MOTOR VEHICLES INSURANCE IN INDIA:

Insurance is a contract of indemnity between two parties, where the insurer assures the insured to pay him a pre-determined compensation in case of any damages to the life or property of the

insured as per the decided terms. The earliest known instance of insurance dates back to the Babylonian period of around 2250 BC, when Babylonians developed a type of insurance for maritime and merchant naval business.

Motor vehicles 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 latest amended Motor vehicles act, 2019. It is referred to as a third-party insurance, since the benefit of the insurance policy is someone other than the two parties to the contract. It well covers the insured's legal liability for death of third-party loss or damage to the third-party property. It is interesting to note that the third-party insurance for all the motor vehicles has been made mandatory under the Motor vehicle act, 2019². The prohibition on use of motor vehicles without an in-force insurance by the vehicle in question, irrespective of the solvency or the paying capacity of the owner or the driver of the vehicle. The Motor vehicle act, 1988, under section 145(g) " third party includes everyone, be it a person travelling in another vehicle, a pedestrian walking on the road or a passenger on the vehicle itself which is the subject matter of the impugned insurance policy³.

2.3 FEATURES OF THIRD-PARTY INSURANCE:

A third-party insurance aims at providing insurance to all other people except to the indemnified or the party to insurance.

Beneficiary of a third-party insurance is the injured victim other than the beneficiaries to the insurance contract. This amount of compensation is generally paid by the insurance company directly to the victim⁴.

In a third- party policy the premium is not variable much as compared to that of a comprehensive insurance policy, because it is a legal liability and such a legal liability can only be determined by the court of law on a case-to-case basis.

This third-party insurance policy is based on the no fault liability, and the same needs to be established in the court of law beyond reasonable doubt⁵.

² THE MOTOR VEHICLES ACT, S.146.(1), 2019 NO 121 OF 1988

³ THE MOTOR VEHICLE ACT, 1988, S.145(g)

⁴ Legal Services India, <https://www.legalserviceindia.com/article/l264-Third-Party-Insurance.html>, (last accessed on 29/11/2021)

⁵ Chapter X of the motor vehicles act 1986

The law requires every vehicle to carry a legal third-party insurance policy in order to ensure that any victim of a traffic accident is not left without compensation.

A third-party insurance policy protects the interests of the strangers to the insurance contract. Third-party insurance is required, there is less likelihood that the process will fail to compensate the victim of a traffic accident because the driver or the owner of the vehicle is unable to pay for it.

2.4 THE COVERAGE OF THIRD-PARTY INSURANCE

Basically this insurance is limited under three conditions:

- 1) Bodily injury to the third party
- 2) Death of the third party
- 3) Property damage of such third party

The act does not cover the insured person unless there is a contract between the insurer and insured to cover insured personally. The third party insurance is a policy whereby the insured person does not get any compensation. It is a piece of social legislation where insurance company indemnifies the insured but does not compensate for his own damage or injury. It is not a comprehensive policy cover.

2.5 INSURANCE TO CERTIFICATE:

Section 147(3) says that the policy of insurance shall be of no force until and unless a certificate of insurance is delivered to the person by whom the policy is effected. The certificate is in a prescribed form and contains such particulars of conditions subject to which the policy is issued. It is a piece of evidence stating that the assured has a policy of insurance required by the authorities.

3.1 REVIEWING THE CURRENT COMPENSATION MECHANISM, THE AMOUNT PAID TO THIRD PARTIES, AND THE NEED TO INCREASE THE AMOUNT PAID:

Over the past few decades, the Indian insurance business has grown at an exponential rate. Rising volumes of motor traffic have correspondingly increased the need for traffic safety. To

protect against third-party claimants, one obtains a third-party insurance coverage. One of the most prevalent types of third-party insurance is a car insurance coverage. A driver who is not the protected party, the principal, and is not therefore protected by the insurance policy, is covered by third-party coverage against claims for damages. The two primary types of motor vehicle insurance are comprehensive and third-party coverage. The policyholder is protected by third-party insurance in case of any unanticipated accidents, which may result in the death of a third person. A pedestrian, a person in another vehicle, or person associated with the subject-matter vehicle itself may be included within the scope. People without this coverage will always be prohibited from operating a motor vehicle in a public area since third party insurance is a required insurance under the motor vehicle statute. According to report published by the world health organisation in 2018, India has the highest rates of traffic accidents worldwide. The ministry of road transport and highways, India experience almost 5 lakh road accidents each year, with 1.5 lakh of those victims losing their lives. The motor vehicles act, depending on the infraction, the penalties have increased by up to ten times. This action was necessary to give the people of this country with a free, secure, and uncorrupt transportation system.

3.2 EVALUATION OF COMPENSATION:

There is no monetary value or piece that can be placed on human life. When the victim is the only provider for the family, when the accident has impacted the victim's mental capabilities, or when the victim is in a vegetative state, determining the value of the incurred loss becomes a challenge. Case laws and studies show that in announcing compensation, the act or, for that matter, the judge, considers the monetary loss and other expenditures the victim must bear, but none includes compensation for loss of limb or life in its most fundamental sense. While determining damages, the courts take into account costs like burial costs or typical damages. The reality of life when determining the amount of compensation to be given to victims of traffic accidents rather than following a stereotyped approach. This applies to both the determination of the extent of disability and compensation under various categories⁶.

3.3 REJECTION OF THE LIABILITY AND SATISFACTION OF THE AWARD:

The insurer has to satisfy the award passed against the insured subject to

⁶ Leela Gupta vs state of Uttar Pradesh(2010) 12 SCC551

- A certificate of insurance has been delivered to the policy holder.
- There is an award against the insured
- The award is in respect of liability which is covered in the act
- The liability is covered by the terms of the policy.

And also the insurer also has a statutory right to repudiate the liability. The defenses available to him have to be within section 149 only.⁷

3.4 INSURANCE COMPANIES HAVE BEEN ALLOWED BY SUCH DEFENCES:

Use of vehicle for hire or for reward when at the time of accident, such vehicle was not permitted to ply for hire or for reward.

- For organizing racing or speed testing
- Use of transport vehicle not allowed for permit
- Driver not holding license or disqualified from holding a license.
- Policy taken is void because of non disclosure of material fact.
- Injury caused or contributed by civil commotion ,civil war, and riot.

There are conditions specified in the policy, breach of such conditions would absolve the insurer from liability.

3.5 NO LICENSE OR FAKE LICENSE:

While hiring the driver for the vehicle the owner took proper and investigated that driver has a license and drivers competent to drive, later if an accident occurs, the insurer cannot repudiate the liability if the driving license was proven to be fake. But the insurer can repudiate the claim if he proves that the insured was privy to the fake character of the license. The breach should be within the knowledge of the insured owner.⁸

The user could use the vehicle for agricultural purpose even though it was not authorized to operate for hire or reward. But when the user gave it to someone else for hire and an accident happened, it was determined that the insurer was not at fault because there had been a violation of a predetermined condition.

⁷ Section 149(2)(a) that there has been a breach of a specified condition of the policy, being.

⁸ United India insurance co. ltd v. Lehra (2003) 2 SCC 338

If there is a requirement” to take all care and due diligence while driving and to keep sober and steady drivers” then if a driver drives under the influence of alcohol and meets with an accident, the insurer can reject the liability.

4.1 DUTY TO DISCLOSE:

The duty is to disclose material facts. Material facts are those which are relevant for the case. The woman while taking insurance knew that her husband who would be driving her car regularly had been involved in a number of accidents, did not disclose this fact to the insurer. The court held that the insurer could avoid liability on this ground. When the answer to the question on a proposal form asking whether the owner’s driver has ever been convicted in relation to operating the vehicle was no. if the owner,s driver had been found guilty of failing to use a side rearview mirror in the case, the court ruled that the reponse was truthful.

4.2 TRANSFER OF VEHICLE:

Does third-party liability end with the sale of the insured vehicle or does it carry over to the new owner?

In an **Shantilal vs Aler Bharadwaj**⁹ the insured transferred the insured vehicle on 2 March 1978 without intimation to the insurer. Accident occurred on 5 march 1978. It was held that motor vehicle insurance being a personal contract, the insured cannot transferred the benefits under the policy without the consent of the insurer, or unless there is a stipulation in the policy itself. The liability thus ceases on transfer. However, Section 157 of the 1988 act made all the difference. The section says that when the owner transfers the vehicle, the certificate of insurance and the policy of insurance shall be deemed to be transferred in the name of the new purchaser.¹⁰ The transferee has to apply within 14 days from the date of transfer to the insurer for making necessary changes with respect to policy of insurance and certificate of insurance.

Regarding this a latest case of **Rikhi Ram v. Sukhania**¹¹, here a rickshaw puller by profession died due to accident with a motor cycle driven rashly by rikhi ram. The representatives of the deceased filed a petition before MACT. It was held that sice the registered owners have transferred the motor cycle to the appellants namely rakhi ram and did not intimate the insurer

⁹ AIR 1985 Guj 164.

¹⁰ Section 157, Transfer of certificate of insurance-(1).

¹¹ (2003) 3 SCC 97.

about the said transfer, the insurer is not liable to pay rather appellants have to compensate the claimants. Hence the appeal by the appellants, in appeal, the court held that compulsory third party insurance is for the benefit of the third party and it does not get effected by the provisions of the act. The liability of the insurer does not cease on transfer.

4.3 PAYMENT OF COMPENSATION:

By virtue of section 149 of the motor vehicles act of 1988, the insurer is now required to pay the award and decree made by the tribunal against the insured. The provision makes clear that, despite the insurance company's right to avoid or cancel the policy, it is nevertheless required to reimburse the victim or anybody else who has a claim under the policy. However, if the insurer establishes the available defences outlined above, he will not be held responsible.

The imposition of this liability does not keep insurance company under any loss because section 149(5) states indisputably that insurer company first pay to the insured and then can recover from him as well. meaning thereby that insurer is liable to pay only because the policy of insurance is in force with respect to the vehicle and insurer is entitled to recover from the insured any amount which he is not liable to pay by virtue of the contract of insurance. The payment of compensation has to be paid because payment is not optional.

There are the conditions also where the insurer must pay, these are:

The insurer is not liable to pay any compensation where he has not been given a notice before or after the commencement of proceeding in which judgement is given:

Execution on the judgement is stayed pending an appeal.

The amount of compensation is provided under second schedule of the motor vehicles act, 1988. The second schedule is taken as a guide. it includes a multiplier and compensation is decided taking in view the age of the victim and if he was earning then the income of the victim too. Other than that, various other circumstances are also taken into consideration for example, the age of dependants, chances of promotion, and life expectancy act.¹²

Section 163-A says that in case of compensation, the claimant does not have to establish the fault of the owner

¹² Section 149(5)

CASES:

NATIONAL INSURANCE CO. Ltd vs BALJIT KAUR &ORS¹³

FACT:

The first respondent in this case filed a claim petition for compensation with the motor accident claims tribunal in Ludhiana after her 16- year old son Sukhwinder Singh passed away as a result of the second respondent's allegedly negligent driving. Respondent and the owner/operator on FEB 19.1999, of the goods vehicle with registration number PB-10U-8937. The claims tribunal determined that the deceased's death occurred as a result of the second respondent's reckless and careless driving while operating the goods vehicle as the victim was returning from a wedding ceremony in the truck. The fact that the a forementioned car was insured with the appellant insurance company was admitted.

ISSUE

Whether insurer is liable?

JUDGEMENT:

The court stated that, the claim petition was approved by the claims tribunal, which relied on the court's ruling in new **India Assurance co. v. Satpal singh**¹⁴. It also rejected the appellant insurance company's argument that because the vehicle in question was goods vehicle and not a passenger vehicle and not a passenger vehicle, it would not be responsible for the passengers it carried. It further ordered the appellant to pay Rs. 1,32,000 as compensation, with interest from the application date at a rate of 9%.

The high court upheld the claims tribunal's decision in M/S. National Insurance Co. Ltd vs Baljit Kaur and ors on January 6, 2004 with the additional instruction that, in the event the owner, the third respondent in this case, had violated any law, the appellant insurer would be entitled insurer would be entitled to recover the amount of damages from him.

¹³ AIR 2004 SC 1340.

¹⁴ (2000) 1 SCC 237.

2) MADRAS MOTOR AND GENERAL vs MADATHI AMMAL¹⁵

FACT:

The accordance with section 110-A(1) of the Motor vehicles act, the motor accidents claims tribunal, Tirunelveli, awarded madathi ammal compensation in the amount of Rs. 5,000 for the loss of her husband, paramasiva konar, in a traffic accident. The accident itself happened on January 8, 1969, about 3.30 a.m. when lorry MDT 7441, owned by Badrakali Ammal and insured with the appent and driven by one Ramachandran, rammed into the deceased's single bullock cart as he was travelling east along the Tirunelveli- tiruchendur main road, west of vittilapuram vilakku, the deceased was thrown from the cart and killed instantly.

JUDGEMENT:

The court stated that, the appeal fails and will stand dismissed with costs. Where accident occurs by a person not holding a license at the time of accident, but the person is not disqualified or holding a license. The insurer cannot exonerate him from the liability.

3) UNITED INDIA INSURANCE LTD vs TILAK SINGH¹⁶

One scooter was insured by the appellant insurance company. The said scooter was then sold to respondent and registration was transferred in 1989. Both the purchaser and owner did not inform about the transfer to insurer. The said scooter met with an accident killing a pillion rider on it. The insurer repudiated the liability stating that the news of transfer was not disclosed to the company and hence not liable to pay.

JUDGEMENT:

The court said that the policy does not cease on transferring the vehicle and it is not compulsory to inform the insurer because the purpose of the act is to accure the victim or legal representatives of third party. However, court held that gratutions persons will remain gratuitous persons whether travelling in a goods vehicle or private vehicle. So the insurer was held not liable. The gratuitous passengers in a private vehicle cannot be covered even if they travel for hire or for reward because for hire or for reward is with respect to public service vehicle only. The position remained somewhat same in today's scenario too. Gratutions

¹⁵ (1974) 2 MLJ 204.

¹⁶ AIR 2006 SC 1576.

passengers are not covered under third party insurance as that would render superfluous the intention of the legislature which has taken within its preview the owner of the goods or his authorized representative carried in the vehicle. The premise that "gratuitous persons" do not find mention in the provision is an ample proof of the intention of the legislature to not to cover such persons.

4) S. IYYAPAN vs UNITED INDIA INSURANCE COMPANY AND ORS¹⁷

FACT:

Deceased Charles was riding his bicycle when a person driving Mahindra maxi cab hit him and Charles died. The question arose for payment of compensation by insurance company, the company repudiated the claim stating that at time of accident the respondent was holding a license to drive light motor vehicle and not transport vehicle which is Mahindra maxi cab, hence there is a breach of policy conditions and insurance company is not liable.

MACT awarded compensation in favour of legal representatives of deceased stating that a person who has a license to drive light motor vehicle can drive Mahindra maxi cab and doesn't require a different license. However the insurance company preferred an appeal to high court which reversed the order of tribunal and stated that the person driving a commercial vehicle requires an appropriate license and thus there was a breach of policy condition, insurance company is absolved from the liability.

Claimants approached the supreme court by special leave. Supreme court held that high court has committed a major fault in exonerating insurer's liability. The driver was holding a valid license for light motor vehicles. Merely because there was no endorsement on the license to drive commercial vehicle the insurer cannot escape from liability.

CONCLUSION:

The researcher has tried to analyze the compulsory third party insurance. It is a piece of welfare legislation for the benefit of third party. It has been made compulsory for all the vehicles plying on roads so that victims of road accidents do not suffer loss. Third party is at risk when they cannot recover from the offending vehicle because sometimes even they have no means to pay. Many times, the victims are not aware of this policy. The insured has to disclose this to the

¹⁷ AIR 2013 SC 2262.

third party. With respect to the unlimited liability of the insurers, they have showed their discomfort with fastening such a liability on them. To tackle this, it is required to set up a centralized database for claims relating to deaths, injuries, permanent or partial disability to keep a check on the claims. It is also advisable to look into the false claims made by the claimants and also to review the progress of the investigators dealing with the third party claims. The authorities need to be pro-active to identify the motor vehicles that are without the insurance, although the vehicle is compulsorily insured when the registration takes place. The MACT should take it upon itself to provide speedy disposal of cases.

Moreover, the premium that is taken from the insured for the third party insurance is fixed by the government and not by the insurer which is very low keeping in mind the unlimited liability of the insurer.