An illustration of a car accident scene. A blue car is parked on a road, with a red motorcycle lying on its side in front of it. A person in a blue jacket and white shirt is lying on the ground near the motorcycle. Two other people, one in a red shirt and one in a yellow shirt, are standing on the sidewalk, looking at the scene with their hands on their heads. The background shows a green lawn and a tree.

# Effect of Non-transfer of name under Insurance Policy after transfer of Vehicle

Under The Motor Vehicles Act, 1988

Ritesh Kumar Srivastava  
Additional District and Sessions Judge  
Kashipur {Udham Singh Nagar}

# CHAPTER XI- INSURANCE OF MOTOR VEHICLES AGAINST THIRD PARTY RISKS{Section 145 to 164}

Section 156. Effect of certificate of insurance

Section 157. Transfer of certificate of insurance.—

## Section 157. Transfer of certificate of insurance-

(1)Where a person in whose favour the certificate of insurance has been issued in accordance with the provisions of **this Chapter** transfers to another person the ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, **the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer.**

[Explanation.—For the removal of doubts, it is hereby declared that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance.]

(2)The transferee shall apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described in the certificate in his favour and the insurer shall make the necessary changes in the certificate and the policy of insurance in regard to the transfer of insurance. 14

## THE CENTRAL MOTOR VEHICLES RULES, 1989

**Rule 144.** Transfer of certificate of insurance When the ownership of a motor vehicle covered by a valid insurance certificate is transferred to another person together with the policy of insurance relating thereto **the policy of insurance of such vehicle shall automatically stand transferred to that other person from the date of transfer of ownership of the vehicle** and the said person shall within fourteen days of the date of transfer intimate to the authorised insurer who has insured the vehicle, the details of the registration of the vehicle, the date of transfer of the vehicle, the previous owner of the vehicle and the number and date of the insurance policy so that the authorised insurer may make the necessary changes in his record.

*Need to fill up and submit a fresh proposal form to the motor insurance company and submit Form 29 and Form 30 to the insurance provider.*

# IRDA Circular No: IRDA/NL/CIR/F&U/073/11/2009 (16-Nov-09)

To  
CEOs of all General Insurance Companies

## **Liability of Insurance Companies in respect of Occupant of a Private Car and Pillion Rider in a Two-Wheeler under Standard Motor Package Policy [also called Comprehensive Policy]**

Insurers' attention is drawn to wordings of Section (II) 1 (i) of Standard Motor Package Policy (also called Comprehensive Policy) for Private Car and Two-Wheeler under the (erstwhile) India Motor Tariff. For convenience the relevant provisions are reproduced hereunder:

### **"Section II - Liability to Third Parties**

1. Subject to the limits of liability as laid down in the Schedule hereto the Company will indemnify the insured in the event of an accident caused by or arising out of the use of the insured vehicle against all sums which the insured shall become legally liable to pay in respect of--

(i) death or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of employment of such person by the insured."


It is further brought to the attention of insurers that the above provisions are in line with the following circulars earlier issued by the Tariff Advisory Committee on the subject:

- (i) Circular M.V. No. 1 of 1978 - dated 18th March 1978 [regarding occupants carried in Private Car] effective from 25th March 1977.
- (ii) MOT/GEN/10 dated 2nd June 1986 [regarding Pillion Riders in a Two-Wheeler] effective from the date of the circular.

**The above circulars make it clear that the Insured's liability in respect of Occupant(s) carried in a Private Car and Pillion Rider carried on Two-wheeler is covered under the Standard Motor Package Policy. A copy each of the above circulars is enclosed for ready reference.**

The Authority vide circular no. 066/IRDA/F&U/Mar-08 dated March 26, 2008 issued under File & Use Guidelines has reiterated that pending further orders the insurers shall not vary the coverage, terms and conditions, wordings, warranties, clauses and endorsements in respect of covers that were under the erstwhile tariffs. Further the Authority, vide circular no. 019/IRDA/NL/F&U/Oct-08 dated November 6, 2008 has mandated that insurers are not permitted to abridge the scope of standard covers available under the erstwhile tariffs beyond the option permitted in the erstwhile tariffs. All General Insurers are advised to adhere to be aforementioned circulars and any non-compliance of the same would be viewed seriously by the Authority.

This is issued with the approval of the Competent Authority.



*Section 145 Definitions (i) "third party" includes the Government, the driver and any other co-worker on a transport vehicle. {as amended vide MOTOR VEHICLES (AMENDMENT) ACT, 2019 NO. 32 OF 2019}*

### ***Section 146- Necessity for insurance against third party risk***

***Section 147- Requirement of policies and limits of liability*** Hon'ble Apex Court in **National Insurance Co. Ltd. vs. Geeta Bhat 2008 (12) SCC 426** held that the owner of vehicle is statutorily obligated to obtain an insurance for the vehicle to cover the third party risk.

*As per provision of Section 157 of MV Act, 1988 once the vehicle is transferred, there is a deemed transfer of policy of insurance in the name of the transferee and the Insurance Company is liable to indemnify the insured or even the transferee by virtue of the deeming provision. Insurance Company could be exonerated from the liability only if they establish the violation of policy conditions or the defences as provided under Section 149(2) of the Motor Vehicles Act, 1988 and not otherwise.*

**Own damage claims-** A three Judges Bench of Hon'ble Supreme Court in **M/S. Complete Insulations (P) Ltd vs New India Assurance Company Ltd on 21 November, 1995, 1996 SCC (1) 221** after referring to the stipulations in Section 157 of the Motor Vehicles Act, 1988 it was held that, **the deemed transfer contemplated under Section 157 of the Motor Vehicles Act may not be applicable in respect of own damage claims.** Hon,ble Apex Court also had considered the scope of section 103-A and Sections 94 and 95 of the old Motor Vehicles Act, 1939 and compared the same with section 157 & 146, 147 and 156 of the Motor Vehicles Act, 1988. In that case the transferee of the vehicle contended inter alia that he was entitled to get the compensation for the damage caused to the vehicle in an accident that took place after the transfer notwithstanding the fact that the insurance policy was not transferred in his name. After observing that the provisions under the new Act and the old Act are substantially the same in relation to liability in regard to third party Hon'ble Supreme Court held that **the transferee-insured could not be said to be a third party qua the vehicle in question. In other words, a victim or the legal representatives of the victim cannot be denied the compensation by the insurer on the ground that the policy was not transferred in the name of the transferee**



- **Own damage claims-**

When the transfer of the vehicle is made and the same is not intimated to the Insurance Company, the person who transfers the vehicle would cease to have any insurable interest in the property so as to make any claim in respect of the vehicle, which he already transferred. Therefore, the liability of the Insurance Company, as far as the own damage of the insured is concerned, will cease to have any effect, when the vehicle is transferred to another person and he fails to intimate such transfer in the manner prescribed. The aforesaid termination of the contractual liability of the Insurance Company is on account of the fact that, the transferee is not a party to the contract of insurance.

**Therefore, the deemed transfer as contemplated under Section 157 of the Motor Vehicles Act, 1988 cannot be made applicable in the case of own damage since the claim of own damage is something between the insurance**

- **In Package Policy occupant(s) carried in a Private Car and Pillion Rider carried on Two-wheeler considered as third party-** A careful reading of the **IRDA Circular No: IRDA/NL/CIR/F&U/073/11/2009 (16-Nov-2009)** would reveal that, the claim at the instance of insured's liability in respect of **Occupant(s) carried in a Private Car and Pillion Rider carried on Two-wheeler** is covered under the **Standard Motor Package Policy [also called Comprehensive Policy]** specifically included under the head of a **third party**.



- **Own damage claims**-The policy of insurance is issued in respect of the vehicle, though it is issued in the name of the owner of the vehicle. **The coverage of policy, except that of the own damage claims, is intended for the benefit of the third parties (parties other than the driver and owner). Therefore, a change of name of the owner of the vehicle, cannot have any consequences, as far as the said coverage is concerned.** This is because, identity of the owner is not at all material for the said purpose, as the policy is issued for the vehicle. Such a change of ownership would not have any impact on the insurable interest as per the policy, because of the reason that, in the case of third party coverage, the insurable interest is not that of the owner, but it is for the third parties, who are the victims of the accident. {**RELIANCE GENERAL INSURANCE COMPANY LIMITED versus ANNAMMA RAJU @ BINCY2022 LiveLaw (Ker) 555**}



- **Third Party Right-**

- Hon'ble the Supreme Court in **Firdaus v Oriental Insurance Company Ltd and others, (2017) 15 SCC 674** hold that liability of the insurance company continues so far as it relates to payment of award even after the transfer of the vehicle by the insured **to another person**, relevant para quoted below;-

In view of the above, it is not necessary for us to give any concluded finding regarding ownership of the vehicle No.HR 2 G 1875 on the date of accident for the purpose of this case. In either of the eventuality, i.e. whether defendant no.1 was the owner of the vehicle on the date of the accident, or defendant no.4 was the owner of the vehicle, the liability of Oriental Insurance Co. Ltd. continues and Workmen compensation Commissioner has rightly fastened the liability on the Insurance Company. The remand made by the High court to find out as to whether Parvez Khan was an employee of the defendant no.1 or not, was unnecessary.

**Absence of any intimation of transfer-** Hon'ble Supreme Court in **G. Govindan vs New India Assurance Co. Ltd. And ... on 8 April, 1999** ,(1999) 3 SCC 754 has settled the controversy as regards liability of insurer to pay compensation to third party in the absence of any intimation of transfer of the vehicle to the transferee. It was held therein **that since insurance against third party is compulsory, and once the insurance company had undertaken liability to third party incurred by the persons specified in the policy, the third party's right to recover any amount is not affected by virtue of the provisions of the Act or by any condition in the policy.** Hon'ble Supreme Court hold that whenever a vehicle which is covered by the insurance policy is transferred to a transferee, the liability of insurer does not cease so far as the third party/victim is concerned, **even if the owner or purchaser does not give any intimation as required under the provisions of the Act. Both under the old act and under the new Act the Legislature was anxious to protect the third party (victim)interest.** {Mallamma (D) By Lrs vs National Insurance Co. Ltd. & Ors on 7 April, 2014}



- Third Party Right-

Hon'ble Supreme Court in

**New Asiatic Insurance Co. Ltd. v. Pessumal Dhanamal Aswani & Ors**

**AIR (1964) SC 1736** after noticing the **compulsory nature of insurance against third-party** observed that **once the company had undertaken liability to third parties** incurred by the persons specified in the policy, the third parties' right to recover any amount under or by virtue of the provisions of the Act **is not affected by any condition in the policy.**

- Hon'ble the Supreme Court in **The New India Assurance Co. Ltd vs Smt. Sheela Rani & Ors on 15 September, 1998, (1998)6SCC599** held that on the transfer of the vehicle about which intimation was given though not strictly as required under Section 103-A of the Act and in the absence of refusal from the insurer the Policy already given by the Insurance Company to the transferor will not lapse. As in the case of Complete Insulations (supra) in the present case also the transferee had intimated to the appellant-Insurance Company about the transfer of the vehicle in his favour though not in the absence of such reply the Certificate shall be deemed to have been transferred in favour of the transferee as per Section 103-A of the Act.



Thank  
you