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## **Introduction**

- \* Insurance is a contract between the indemnifier and the indemnified, where the indemnifier agrees to share the risk of the indemnified as per the terms of their contract in lieu of some consideration known as premium amount.
  
- \* Under motor vehicle insurance, there a concept called third party, which denotes the risk of damage of either life or property of any person other than the parties to the insurance contract.

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## **Reason**

- \* One of the major reason behind the third party insurance mandatory for all motor vehicles, was that to make sure that in case of an accident, if any third party has been injured and owner or driver of the vehicle does not have adequate wealth to compensate the injured third person, then, the insurance company shall compensate them.
- \* It is also aims to compensate the innocent victims of road accident, who are at times walking as pedestrians.
- \* In India third party insurance has been mandated under Motor Vehicle Act, 1939.

\* Motor third Party insurance or third party liability cover, which is sometimes also referred to as "Act only" cover, is a statutory requirement under Motor Vehicle Act. It is referred to as third party cover since the beneficiary of policy is someone other than the two parties involved in contract i.e. insured and the insurance company.

\* A third party insurance policy is a policy, under which the insurance company agrees to indemnify the injured person, if he is sued or held legally liable for injuries or damage done to a third party.

\* The insured is one party, the insurance company is the second party and the person you (the insured) injure, who claims damages against you, is the third party.

\* In Motor Vehicle Act, third party has been defined in Section 145 (i) ***"third party"*** ***includes the Government, the driver and any other co-worker on a transport vehicle.***

## **Salient Features**

- 1.** *In National Insurance Company Ltd. Vs. Fakir Chand and And Ors. , AIR 1995 J K 91*, the Court held that third party risk insurance is mandatory under the statute.
- 2.** Third party does not cover injuries to the insured himself but to the rest of the world, who is injured by the insured.
- 3.** Beneficiary of third party insurance is the injured third party. The insured or the policy holder is only nominally the beneficiary of this policy. In practice, the money is always paid, direct by the insurance company to the third party and does not ever pass through the hands of the insured person.

- 4.** Third party insurance is almost entirely fault based ( means you have to prove the fault of the insured first and also that injury occurred from the fault of the insured to claim damages from him).
- 5.** Third party insurance involves lawyers aid.
- 6.** Third party insurance is unpopular with insurance companies as compared to 1<sup>st</sup> party insurance because they never know the maximum amount they will have to pay under third party policies.

## **Legal Provisions**

In accordance with Motor Vehicle Act, there are certain requirements to be followed for third party insurance, which are as follows:

\* **Section 146** provides that the driver of the vehicle must always carry at least a bodily injury liability and coverage for the liability of property damage.

In Govindan Vs. National Assurance Company Ltd, the Court held that no clause in an insurance policy can override the third party insurance policy.

\* **Section 147 (1):** An insurer authorize to do so, must provide for any damage to a third party's vehicle caused by the insured. There policies are required to cover any accident in accordance with the value of liability incurred. A certificate is to be granted to the insured in this regard.

\* **Section 157 :** The certificate of insurance can be transferred to the new owner of the vehicle, if and when the vehicle is transferred to a new owner. The transferee is required to apply within 14 days to make the changes necessary.

In the case of *Karnataka S.R.T.C. Vs National Assurance Company Ltd.* , the vehicle in question was only given on hire in accordance to an agreement and was not transferred completely. It was held by the Court that the insurer would be held liable even in case of an agreement of lease or hire. Thus, even if the transfer of vehicle takes place, even without providing notice to the insurer, the liability of insurer will not cease.



## **Right to receive information**

Any person, against whom a claim for damages is made, be it insured or uninsured, must provide any information to third party as and when necessary. The insured is required to mention whether or not he has been insured with reference to the liability.

## **Transfer of rights of insured to the third party**

When the third party raises a claim against the insured with respect to an event that has been insured, the insurer undertake to pay the damages. If the insured is insolvent, then all the rights that holds in relation to the insurer will be transferred and vested to the third party in the same power.

## **Case laws**

**1.** *National Insurance Company Ltd. Vs. Swarn Singh (2004)*, the Court held that : A contract that includes a condition taking away the rights of third party would be void. The exception would be in accordance with Motor Vehicle Act under the proviso of Section 149(2)

An insurer can not avoid statutory liability as they have rights against the insured according to proviso. If a judgment establishes the liability of insurer, it can not be questioned.

**2.** *National Insurance Company Ltd. Vs. Narain Dutt*, explain that Section 149 of Motor Vehicle Act describe the duty of insurer with respect to the execution of judgment in favour of third parties.

It was held by the Court that there is no contractual liability between a third party and the insured himself.

**3.** *S. Iyyapan Vs. United India Insurance Company Ltd. (2013)*, Hon'ble Supreme Court held that: the intent behind ensuring, compulsory third party insurance for owners of vehicle is to provide any damage inflicted to the third party on account of the vehicle. They must be able to get sufficient damages in case of any injuries or even death.

**4.**         *National Insurance Company Ltd. Vs. Nicolletta Rohtagi (2002)*, in which the Court held that irrespective of the fact that whether the insurer is a nationalized company or not, the intention of third party insurance is to protect the interest of third party insurance is to protect the interests of third party and not the company itself.

**5.**         *Oriental Insurance Company Ltd. Vs. Sudhakaran K.V. (2008)*: This case established the difference between an owner of the vehicle and the third party for an insurance contract. It explains that Section 147 of Motor Vehicle Act is to be taken only by the owner of the vehicle. It is to be used with respect to a third party's reimbursement claim. It is in no way created for the benefit of the owner of the vehicle itself.

**6.**            *United India Insurance Company Ltd. Vs. Karam Chand and other (2011)*, The Court established the principle that third parties include all those who suffer as the result of the use of said motor vehicle in public place. These parties could be occupants of the vehicle or even any other person traveling by road or in any other vehicle, who fall victim to the accident. All these individuals are liable to be awarded compensation, as a result of such accident. The compensation is to be awarded by the insurance company that the concerned vehicle holds a policy with.

**7.**            *Smt. Tulsi Sahukar Vs. National India Assurance Company (2010)*, The Court held that the transfer of insurance policy to the wife of deceased was automatic and was deemed to have happened, even if the policy had not changed the name of beneficiary despite the transfer of ownership of vehicle has already occurred.

The liability of insurer would still be valid and does not ceased, even if the owner fails to intimate the insurer about the death. The insurer would still be liable to compensate third party victims, who the policy owner has harmed.

**8.**            *U.P. State Road Transport Corporation Vs. National Insurance Company Ltd. And Others (2021)*, The Apex Court held that when the effective control and command of the bus is with the corporation, the corporation becomes the owner of the vehicle for the specified period. Further, both the vehicle as well as policy is deemed to be transferred to person in whose control the vehicle is for the time being and it would be the insurance company's duty to compensate the same.



## **Liability of Insurance Company in case of gratuitous passengers and pillion riders**

Hon'ble Supreme Court, in the case of United Insurance Company Ltd. Shimla Vs. Tilak Singh and others (2006) ACJ 1441, held that the pillion rider is not covered under insurance policy as the insurance policy was a statutory policy and it did not cover the risk of death or bodily injury to gratuitous passenger.

**Liability of insurer to pay compensation in case, where injured claimant or deceased was traveling in the private car or occupants or travelling on two wheelers as pillion rider.**

The Hon'ble Supreme Court in the case of National Insurance Company Ltd. Vs. Balakrishnan , AIR 2013 SC 473, held that occupant of private car or the pillion rider of two wheelers is entitled to recover amount of compensation from insurer, provided that the offending vehicle is covered with the comprehensive/ package policy.

## **Question referred to a larger bench.**

Hon'ble Supreme Court, while hearing the case has referred the question to a larger bench on 31<sup>st</sup> of August 2022. The points of reference are given below:

- 1.** Does third part insurance cover pillion riders?
- 2.** Is the insurance company liable to indemnify the insured on account of injuries or death of such pillion rider in case of an, 'Act only' policy?

**Thanks :     Rajeev Kumar Khulbey,**  
**District & Sessions Judge, Bageshwar.**