

Subject: Law of Torts and Consumer Protection Act-II

B.A.LL.B-IIInd Sem

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Study Material of Unit-II(C)(i)

Topic: Compulsory Insurance under Motor Vehicle Act-1988

Compulsory Insurance

Introduction

Motor Vehicle Act-1988

Motor accidents are a fairly commonplace occurrence in our daily lives. Motor accidents occur very frequently and lead to considerable loss of life and property. To cover such accidents and make provisions for them, a legislative mechanism namely the Motor Vehicles Act 1988 has been instituted. The parties thus involved in a typical motor accident case requiring judicial dispensation include the owner of the vehicle, the driver the insurers and the deceased/injured. Motor Vehicles Act,1939 consolidates and amends the law relating to motor vehicles. This has been amended several times to keep it up to date. The need was, however felt that this Act should, now inter-alia take into account also changes in the road transport technology, pattern of passenger and freight movements, development of the road network in the country and particularly the improved techniques in the motor vehicles management.

Objective of Motor Vehicles Act

The Motor Vehicles Act, 1988 has been enacted keeping in mind the following objectives;

- To take care of the fast increasing number of both commercial vehicles and personal vehicles in the country.
- Concern for road safety standards, and pollution-control measures, standards for transportation of hazardous and explosive materials
- Need for effective ways of tracking down traffic offenders
- Stricter procedures relating to grant of driving licences and the period of validity thereof.

- Administration of the Solatium Scheme by the General Insurance Corporation.
- Provision for enhanced compensation in cases of “no fault liability” and in hit and run motor accidents
- Provision for payment of compensation by the insurer to the extent of actual liability to the victims of motor accidents irrespective of the class of vehicles
- Providing adequate compensation to victims of road accidents without going into long drawn procedure
- Enhancing penalties for traffic offenders
- Increase in the amount of compensation of the victims of hit and run cases.
- Removal of time limit for filling of application by road accident victims for compensation.
- Punishment in case of certain offences is made stringent.
- Formula for payment of compensation to road accident victims on the basis of age / income, which is more liberal and rational etc.

In the case of *Common Causes (A Registered Society) v. Union of India* (2008), the SC held that the Motor Vehicles Act, 1988 is a comprehensive enactment in respect to various matters relating to traffic safety on the roads and minimization of roads and minimization of road accidents.

Compulsory Insurance

The Motor Vehicles Act, 1988, like the earlier Act of 1939, makes the insurance of motor vehicles compulsory. The owner of every motor vehicle is bound to insure his vehicle against third party risk. The insurance company, ie, the insurer covers the risk of loss to the third party by the use of the motor vehicle. Thus, if there is insurance against third party risk, the person suffering due to the accident (third party) caused by the use of motor vehicle may recover compensation either from the owner or the driver of the vehicle, or from the insurance company, or from them jointly. All such persons risk of loss to whom, on account of the use of the vehicle,

is required to be covered are third party in the sense that they are other than the first party the insurer and the second party' the insured.

Chapter XI of the Act (Sections 145 to 164) contains provisions concerning "Insurance of Motor Vehicles against Third Party Risks".

According to Section 146, no person can use, except as a passenger, or cause or allow any other person to use a motor vehicle in a public place, unless an insurance policy against third party risks, as required by this Chapter, is in force, in relation to the use of the vehicle. Section 146 (1), which contains the relevant as under :

"No persons shall use, except as a passenger, or cause or other person to use a motor vehicle in a public place, unless there is in force, in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter: Provided that in the case of a vehicle carrying, or meant to carry, dangerous or hazardous goods, there shall also be a policy insurance of insurance under the Public Liability Insurance Act, 1991,"

Explanation.-A person driving a motor vehicle merely as a paid employee while there is in force, in relation to the use of the vehicle no such policy as is required by this sub-section, shall not be deemed to act in contravention of the sub-section unless he knows or has reason to believe that there is no such policy in force."

The above stated requirement of insurance is not there in respect of any vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise, or where an exemption from the requirement of insurance has been given by the appropriate Government.

"196. Driving uninsured vehicle.—Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of Section 146 shall be punishable with imprisonment which may extend to three months, or with fine which may extend to one thousand rupees, or with both."

After Motor Vehicles (Amendment) Act 2019 penalty for driving without insurance increased from Rs.1000 to Rs.2000/

Object of Compulsory Insurance

All motor vehicles to be used in public places need to be insured against third party risks. The object of this provision is to protect the interest of a third party, who suffers by the use of the said vehicle. If the vehicle is insured against third party risk the injured party can claim compensation from the insurance company. Even if the driver or the owner of the vehicle is not in a position to pay compensation to the accident victim, the insurer will pay compensation on behalf of the owner of the vehicle insured. This provision aims at giving relief to such person who would have suffered because of the inability on the part of the owner or driver of the vehicle to pay compensation. The insurer is liable to indemnify the person, or classes of persons, specified in the policy in respect of any liability, which the policy purports to cover in the case of that person or those classes of persons. It is the duty of the insurer to satisfy judgment against persons insured in respect of third party risk.

In India, under the provisions of the Motor Vehicles Act, 1988, it is mandatory that every vehicle should have a valid Insurance to drive on the road. Any vehicle used for social, domestic and pleasure purpose and for the insurer's business motor purpose should be insured. This section is enacted to safeguard the rights of third party who may be involved in motor vehicle accidents. If a motor vehicle is involved in an accident with some person, who claims damages, it is the insurance company which is made liable by forcing the vehicle owner to get the vehicle insured before he can legally drive the same on the road.

Who Is Third Party

A third party insurance policy is a policy under which the insurance company agrees to indemnify the insured 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.

Section 145(g) "third party" includes the Government.

National Insurance Co. Ltd. v. Fakir Chand(1995), it was held that third party should include everyone (other than the contracting parties to the insurance policy), be it a person traveling in

another vehicle, one walking on the road or a passenger in the vehicle itself which is the subject matter of insurance policy.

Salient Features of Third Party Insurance

- Third party insurance is compulsory for all motor vehicles. In *G. Govindan v. New India Assurance Co. Ltd.* [(1999)], it was held that third party risks insurance is mandatory under the statute. This provision cannot be overridden by any clause in the insurance policy.
- Third party insurance does not cover injuries to the insured himself but to the rest of the world who is injured by the insured.
- Beneficiary of third party insurance is the injured third party, the insured or the policy holder is only nominally the beneficiary of the policy. In practice the money is always paid direct by the insurance company to the third party (or his solicitor) and does not even pass through the hands of the insured person.
- In third party policies the premiums do not vary with the value of what is being insured because what is insured is the legal liability' and it is not possible to know in advance what that liability will be.
- 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).

Requirements of Insurance Policies and Limits of Insurer's Liability

Section 147 of Act provides about the requirements of valid policy of insurance, and also the limits up to which the insurer will be liable in respect of an insurance policy.

The provision is as under:

147. Requirements of policies and limits of liability.-(1) In order to a policy which comply with the requirements of this Chapter, a policy of insurance must be a policy which

(a) is issued by a person who is an authorized insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)-

2. against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorized representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place; against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place :

Provided that a policy shall not be required

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee-

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or (ii) to cover any contractual liability,

Explanation: For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely –

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand : Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters, and different forms, particulars and matters may be prescribed for different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

Usha Devi vs Pawan Kumar (2018) SC held that "Where there is no insurance cover for a vehicle, the owner should be directed to offer security or deposit an amount, adequate to satisfy the award that may be ultimately passed, as a condition precedent for release of the seized vehicle involved in the accident. If such security or cash deposit is not made, within a period of three months, appropriate steps may be taken for disposal of the vehicle and hold the sale proceeds in deposit until the claim case is disposed of." The court further asked all the states in the country to ensure that in case of an accident, the owner of an uninsured vehicle is made to pay adequate compensation to the victim's family.

Commencement of Insurer's Liability

Commencement of insurer's liability means as to from when the liability of the insurer starts. In other words from when the insurer will be made liable.

The insurer's liability commences as soon as the contract of insurance comes into force and remains operative during the operation of the policy. In case of renewal of an existing insurance policy, the risk is covered from the moment the renewal comes into force.

In National Ins. Co. Ltd. v. J.N. Dhabhi, (1997)

In this case the contract of renewal of an insurance policy came into force on 25.10.1983 at 4.00 p.m., whereas the accident in question had occurred on 25.10.1983 at 11.14 a.m., i.e., before the renewal of the contract. It was held by the Supreme Court that the insurer could not be made liable for such an accident as the liability was not commenced.

In National. Ins. Co. Ltd. v. R.K. Paswan (1997), in this case the question arose about the position of the parties if an insurance company pleads that the vehicle involved in the accident was not insured by it. In such a case, it has been held, that it is the primary duty of the vehicle owner to disclose the insurance particulars of the vehicle and prima facie prove that the vehicle was insured with a particular company, failing which the vehicle owner has to pay the entire amount of compensation awarded in the case.

In V. Rani v New India Assurance Co. Ltd. (1997), it was held that the insurer cannot avoid his liability after the issue of certificate of insurance. In this case, the certificate of insurance was signed by the insured company's officials on 18-2-92. The insured vehicle met with an accident only thereafter. It was held that the liability of the insurer had come into existence under the Motor Vehicles Act towards the third party. The plea of the insurance company that the certificate of insurance was wrongly granted either by reason of any mistake or fraud committed by either of the parties or by its officers, was rejected. It was held that the insurer should pay to the third party. Thereafter, the insurer could have the remedy of a separate action against the owner of the vehicle to recover that amount.

In National Insurance Co. Ltd. v. Yellamma (2008), the owner of the vehicle after getting the vehicle insured issued third party cheque towards the payment of the premium. The Development Officer of the Insurer by inadvertence issued a cover note. When the said mistake

came to his notice, the owner was asked to pay the amount of the premium. The amount so asked, was not tendered and instead the owner returned the original cover note and took back the cheque. As a result, the cover note was cancelled. Thereafter the vehicle met with an accident. Since, there was no valid insurance policy as on the date of the accident, the Apex Court held that the insurer was not liable to pay compensation for the accident occurred.

Nature and Extent of Insurer's liability

The policy of insurance, issued by an authorized insurer, is:

1. To insure the person or classes of persons specified in the policy and the insurer is it an honor of the vehicle
2. The insurer is liable to the extent specified in Section 147(2), and
3. The liability is for damage caused by, or arising out of the use of the vehicle in a public place.
 - Insurer's liability for third party risks-Liability for injury to certain person or classes of persons (other than gratuitous passenger and pillion rider)

Gratuitous passenger means a passenger who boards motor vehicle without any payment for the same. And non- gratuitous passenger is one who pays for boarding the vehicle.

Section 147 mention the classes of persons for damage to whom an insurer is liable under the Act policy. Such liability is for death or bodily injury or the damage to the property of third party or death or bodily injury to any passenger of a public service vehicle caused by, or arising out of the use of the vehicle in a public place. The Act policy covering only Third Party Risks and does not make the insurer liable for the harm suffered by reward. passenger travelling in a private car, neither for hire nor Insurance Policy Covering Risk of Third Party only It is well settled that where the contract of insurance covers the risk of third party but not that of the owner or pillion rider of a two wheeler, the liability of the Insurance Company, in a case of this nature, is not extended to a pillion rider of the vehicle.

In Oriental Insurance Co. Ltd. v. Sudhakaran, K.V(2008), the deceased was travelling as a pillion rider on a scooter, when she fell down and succumbed to the injuries sustained by her. In terms of Section 147 of the Motor Vehicles Act, 1988, it is imperative for the owner of a vehicle

to take a policy of insurance in regard to reimbursement of the claim to a third party while it is permissible for the owner to take a policy which may cover himself from other risks. Since, in the instant case, the contract of insurance covered the risk of third party only, the question before the Court was whether the pillion rider on a scooter would be a third party within the meaning of Section 147 of the 1988 Act. Holding that the pillion rider in a two wheeler was not to be treated as a third party when the accident had taken place owing to rash and negligent riding of the scooter and not on the part of the driver of another vehicle, the Apex Court held that the legal obligation arising under Section 147 of the Act, 1983, could not be extended to an injury or death of the owner of the vehicle or the pillion rider.

In Oriental Insurance Co. Ltd. v. Jhuma Saha (2007), the SC held that an owner of a vehicle could only claim provided a personal accident insurance had been taken out. Since, the additional premium was not paid in respect of the entire risk of death or bodily injury of the owner, Section 145(b) was held not attracted, the Court ruled.

In K. Gopalakrishnan v. Sankara Narayanan (1968), it was observed that the owner of a scooter is not bound to take out a policy in respect of third party risks to cover claim of pillion rider carried gratuitously, and, therefore, the insurance company is not liable for injury to a pillion rider unless the owner of the scooter had taken a policy covering such a risk.

In Subhash Chander v. State of Haryana(1975), it has been held that if a gratuitous passenger travelling in a jeep dies, the insurance company cannot be made liable for the same.

In Krishna Gupta v. Madan Lal (1996), it was held that when no extra premium had been paid for covering the risk of passengers in a car, the insurance company could be held liable for the death of a car passenger.

If the policy covers the risk to a gratuitous or other passenger, the insurer can be made liable for the death or bodily injury to such a passenger.

In Prabhu Dayal Agarwal v. Saraswati Bai (1975), the insurer has issued a comprehensive policy to the owner of a car, which stipulated that the insurer shall indemnify the insured in the event of an accident caused by or arising out of the use of the motor car against all sums, including claimant's cost and expenses, which the insured shall become legally liable to pay in

respect of death of, or bodily injury to, any person. In this case a gratuitous passenger travelling in the car was killed. In an action by the mother of the deceased, Saraswati Bai, it was held that since the insurer had undertaken liability wide enough to cover such a situation, he was liable for the same.

Driver Driving Without Driving Licence

Section 3(1) of the Motor Vehicles Act, 1988 requires holding of driving licence. It is a material requirement. Section 3(1) provides that no person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorizing him to drive the vehicles and no person shall so drive a transport vehicle other than a motor cab hired for his own use or ruled under any scheme made under sub-section (2) of Section 75 unless his driving licence specially entitled him to do so.

As a result of the provision of Section 3 above, a person having a licence to drive light motor vehicle cannot drive a transport vehicle.

In New India Assurance Co. Ltd. v. Prabhu Lal (2008), the vehicle in question being in the category of transport vehicle, was driven by one Ram Narain, having a licence to drive light motor vehicle, could not have driven the vehicle in question. It being so, the Apex Court held that the appellant was not liable for the accident caused by the said vehicle. However, the claimant's right to compensation would not be affected by the fact that the driver was driving without a driving licence.

In Oriental Insurance Co. Ltd. v. Brij Mohan and others (2007), poor labourer had slipped down from trolley attached to a tractor. There was no insurance cover in respect of trolley. Tractor was insured only for carrying out agricultural work which would not include digging of earth and taking it in trolley to brick kiln. Aggrieved person being mere passenger and poor labourer had become disabled. Insurer was directed to satisfy award with right to realize the same from owner of tractor and trolley.

It is well settled that in case the driver of the vehicle does not have a licence at all, the liability to make payment of compensation would fall on the owner of the vehicle since it is held to be his

obligation to take adequate care to see that the driver has an appropriate licence to drive the vehicle.

In N.I. Co. Ltd. V. G. Mohd. Vani (2004) it is held that if the driver did not have a valid driving licence then the Insurance Co. after paying the compensation amount would be entitled to recover the same from the owner of the vehicle.

in *Jawahar Singh v. Bala Jain (2011)* it was held the motorcycle was being driven by a minor which hit a scooter causing fatal injuries resulting in death of the driver of the scooter, the liability to pay compensation would shift on the owner of the motorcycle. Since it was the duty of the owner to ensure that his motorcycle was not misused, the defence by him that the key of the vehicle was taken by the minor without his knowledge was held not probable.

Insurer's liability towards the owner of the vehicle

An insurance contract is a personal contract between the insurer and the owner of the vehicle taking the policy, for indemnifying the insured for damage caused to a third party from the accident.

In order that the insurer can be made liable, it is necessary that the insurance policy must be in the name of the owner of the vehicle.

In Raj Chopra v. Sangara Singh (1985), the claimant's husband, Manohar Lal Chopra, Project Officer Haryana Tourism Corporation, who was travelling in a car, got killed in an accident between his car and a truck. It was found that the accident had occurred due to the negligence of the drivers of the car and the truck. Regarding the matter relating to the liability of the insurance company with which the car was insured, it was admitted that the owner of the car was Padma Rani, whereas the insured thereof was Ghanshyam Dass Sharma. This being the position, it was held that since the car was insured in the name of its owner, the insurance company could not be made liable for the same. The liability in respect of the negligence of the driver of the car, therefore, was held to be of the driver and the owner of the car only.

Who is an "owner?"

According to Section 2(30): "Owner" means a person in whose name a motor vehicle stands registered, and if such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under the agreement." means - for the purpose of liability under the Motor Vehicles Act, the term owner (1) a person in whose name the motor vehicle stands registered, and (2) a person in possession under a hire-purchase agreement, or an agreement of lease or hypothecation.

Insurer's Liability for 'Use of the Vehicle in a 'Public Place

For the liability of the insurer to arise under Section 147 Act, it is further necessary that the damage must be caused by or arising out of

- (i). the use of the vehicle;
- (ii) in a public place.

Use of the Vehicle

For the vehicle to be in use, it is not necessary that must be running on the road. It is in use even when it is parked, or even when its battery has been taken out. In *Elliot v Grey*(1958), it has been held that if the owner of a vehicle has taken out the battery of the vehicle, and it cannot actually be run without the battery, the owner still has the use of the vehicle. What is required is the use of the vehicle rather than its being run when the accident is caused.

In *Oriental Fire & General Ins. Co. v. S.N. Rajguru* (1985), an oil tanker parked on the footpath near a public road, burst and exploded, and as a result of which one person was thrown up and sustained injuries, and subsequently died. Insurance company pleaded that at the relevant time the vehicle was not in use much less in a public place. The contention was rejected by the Bombay High Court. It was observed that the tanker was parked near the footpath on the road and not in any garage, and the dead body of the deceased was found at a distance of about 10 feet from the tanker, and as such the vehicle was in use at a public place, and, therefore, the insurance company was liable.

In *New India Assurance Co. Ltd. v. Yadu Sambhaji More (2011)*, the Apex Court held that where a petrol tanker falling on Kutcha ground and came to rest after being hit by rear left side of a truck, would not be held to be in use. Thus, when after 4 hours the tanker exploded due to petrol leakage resulting in the death of a person gathered to collect petrol, could be said to be an accident arising out of use of motor vehicles within the meaning of Section 110 of the M.V. Act.

In A Public Place

It has been noted above that the insurer's liability under the Act can arise only in case there has been use of the vehicle in a public place. The term "public place" has been defined in Section 2(34) Act, as under:

“ Public place means a road, street, way, or other place, whether a thoroughfare or not, to which the public have a right to access, and includes any place or stand at which passengers are picked up or set down by a State carriage”.

Public place, is a place to which the public have a right of access' would mean the place where members of the public have admission as of right, that is, where they can move without any hindrance or without being required to take any permission from anybody. If the place is one where members of the public cannot go as of right, and for going to that place some sort of permission is needed, it is not a public place.

In *Life Insurance Corporation of India v. Karthyani (1976)*, it has been held that the factory area of Hindustan Steel Limited, Rourkela, where the visitors can go after obtaining special permit on prior application for the purpose, is not a public place, and, therefore, the insurance company is not liable for the accident taking place in the factory area. Similarly, if a truck was negligently driven in the jetty of a port which is a private place, the insurer could not be made liable for the same, but only the owner was held liable.

Motor Vehicles (Amendment) Act 2019

Motor Vehicles (Amendment) Act 2019 has included the driver's attendant in Third Party Insurance. There will be no cap on liability of insurers. There will be a ten-time increase in insurance compensation, from Rs 50, 000 to Rs 5 lakh. Also the claim process has been simplified. Insurance firms have to pay claims within a month, if the victim's family agrees to

accept Rs 5 lakh compensation. The Bill also increases the minimum compensation for hit-and-run cases from Rs 25,000 to Rs 2 lakh in case of death, and from Rs 12,500 to Rs 50,000 in case of grievous injury.

Penalty for driving without driving licence increased from Rs. 500 to Rs. 5000/-. And penalty for driving without insurance increased from Rs.1000 to Rs.2000/-

Therefore, it can be said that the compulsory nature of third party insurance is justifiable as it makes the process easier for the injured person to recover money from the insured. The defendant or wrongdoer cannot be exempted on the ground that he has become insolvent. If he owns a vehicle he is bound to pay to the injured directly or through his insurance company.

Probable Questions

1. Explain the legal requirement of Compulsory Insurance.
2. Discuss in detail the relevance and objective of 'Third Party Risk' Insurance.
3. Analyze the extent of Insurer Liability.
4. *"Third Party Risk' Insurance is an attempt to ensure that the victim of accident is fully compensated". Comment*