CONTRACT OF INDEMNITY: AN INTRODUCTION

Introduction

There is a basic rule that whoever harms or causes injury to another person has to pay the damages or costs to the injured person. The kings in a primitive society ruled on this principle. Whenever they had to deal with such cases where one party caused damage to the other, they made him liable to pay costs or damages. The contract of indemnity works on the same principle.

Indemnity is a kind of compensation that protects you from any potential losses. In its broadest sense, indemnity refers to the payment of money to a person who has lost money, goods, or other property due to the error of a third party. This concept of indemnity is also incorporated in English law and is considered a commitment to protect a person from losses due to his actions, which might be directly or indirectly caused.

Contract of indemnity: an overview

The word indemnity has been derived from the Latin term "*indemnis*" which means unhurt or free from loss. As we all know, the fundamental idea behind an indemnity or indemnification is to transfer some or all of the liability from one party to another. This means that one party to the contract, referred to as the "indemnifier" or "indemnifying party", promises to protect another party, referred to as the "indemnity holder" or "indemnified party", from not only loss, cost, expense, and damage but also from any legal consequences resulting from an act or omission by either the indemnifier or a third party or any other event. **Section 124** of the Indian Contract Act, 1872 defines indemnity as' "A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a contract of indemnity."

for example: A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of indemnity.

As per the Oxford dictionary, "Security from damage, loss, or penalty." The definition of the word "indemnify" is to compensate someone for harm, loss, or damage. Indemnity contracts and contracts for insurance are extremely similar. In an insurance contract, the insurer pledges or promises to make up in the form of compensation for the insured's losses. In return, he receives consideration in the form of a premium. These kinds of transactions are not governed by the Contract Act. This is so because legislation like the Insurance Act has provisions specifically for insurance contracts.

According to the definition given by Halsbury, the term "indemnity" is a contract that expressly or impliedly protects a person who entered into a contract or is about to enter from any losses, irrespective of the fact that those losses were due to the actions of a third party. As mentioned above, the word indemnity is derived from the Latin word "indemnis", which means freedom from loss. According to

Longman's dictionary, it is protection against any kind of loss, expense, etc., in the form of a promise to pay for those losses.

Illustrations

X contracts to indemnify Y against the consequences of any legal proceedings that Q may bring against Y for a certain sum of money. This contract or promise is known as a contract of indemnity.

A promises to indemnify B if his car is damaged in an accident. B met with a minor accident in which he did not suffer any injury, but his car was damaged completely. Here, A is obliged to indemnify B for the damage.

A asks B to invest money in C's business and contract to indemnify him if he suffers any loss. B suffered a loss of Rs 1,00,000/-. According to the contract of indemnity entered into by A and B, A must indemnify the damages and other costs to B.

Essential elements

For the purpose of a contract of indemnity, the following conditions must be satisfied:

- There are two parties involved in the Contract of Indemnity. The two parties are:

Indemnifier: Someone who protects against or compensates for the loss of the damage received.

Indemnified/Indemnity-holder: The other party who is compensated against the loss suffered.

Example- A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of indemnity.

- The term (Indemnity) means to make good the loss or to compensate for the losses.
- To protect the promisee from unanticipated losses, parties enter into the contract of Indemnity.
- It is a promise to save a person without any harm from the consequences of an act.
- The contract may be expressed or implied.
- It must satisfy the essentials of a valid contract.

In the case of Mangladha Ram v. Ganda Mal, the vendor's promise to the vendee to be liable if title to the land was disturbed was held to be one of indemnity.

Objective and nature of the contract of indemnity

The purpose of entering into a contract of indemnification is to safeguard the promisee from unforeseen losses. A contract for indemnity may be expressed or implied. In other words, parties may directly impose their own conditions in such a contract. The nature of circumstances may also create indemnity obligations impliedly.

A contract of indemnity has a contingent nature, i.e., it has a conditional structure, and it mainly provides a safeguard provision for potential risks and uncertainties. A contract of indemnity is just like any other contract, and it must necessarily follow all the requirements of a valid contract. For instance, A fulfils B's request for action. When A pledges to make up for B's losses, if he incurs any, they imply the formation of an indemnity contract.

A contract of indemnity is essential because a party may not be able to command all apparent aspects of the performance of a promise. When the circumstances surrounding the performance are beyond the authority and control of the party, the party can be sued for the actions of another. Indemnity is a subset of compensation, and a contract of indemnity is a type of contract. The obligation to indemnify is a responsibility that the indemnifier willingly and voluntarily accepts.

In most cases, an insurance contract is not considered an indemnity contract in India. Agreements of marine insurance, fire insurance, or motor insurance, on the other hand, are considered contracts of indemnity because, unlike life insurance, which provides a specific sum of money upon the death of the policyholder, when a creditor takes out a policy on the principal debtor, he becomes entitled to a specific amount of money.

Conditions for the contract of indemnity

Parties to the contract of indemnity

As mentioned above, there must essentially be two parties in a contract of indemnity: the indemnity holder and the indemnifier. Moreover, no individual can enter into a contract with themselves, and the minimum requirement for any contract to be legally valid is for two parties. Additionally, these parties must have the capacity to contract. However, depending on the circumstances, there may be more than two parties.

- The promisor or indemnifier

An indemnifier is a person who promises to compensate for a loss but does not bear the loss.

- The promisee or the indemnified or indemnity holder

An indemnity holder is a person whose losses are compensated by an indemnifier.

Illustration

There is a contract between A and B in which A promises to deliver certain goods to B for Rs. 7,000 every month. C comes and makes a promise to indemnify B’s losses if A fails to deliver the goods.

Here,

C is the indemnifier or promises as he promises to bear the loss; and

B is the indemnity-holder or promisee or indemnified as his losses are compensated for.

Promise to pay losses

A contract of indemnity is one in which one party promises to protect the other party from harm brought on by the actions of the other party.

One party must present a condition to another party, and the other party must accept it. Acceptance occurs when another party accepts the offer on the same terms. After accepting the offer, it becomes a promise. The party that made the promise is now known as the promisor, and the person who accepted it is now known as the promisee.

It is an important part of the contract of indemnity that “the promise must be made by the promisor to pay the losses of the promisee.” A contract of indemnity is one in which one party promises to protect the other party from harm brought on by the actions of the other party.

Expressed or implied

As stated above, a contract for indemnity may be expressed or implied. In other words, parties may directly impose their own conditions in such a contract. The nature of circumstances may also create indemnity obligations impliedly. Express contracts are those that are created orally or in writing, whereas implied contracts are those that are made as a result of the conduct of the parties.

There must be a loss incurred

The condition of the contract of indemnity is that “the loss must be incurred by the promisee.” The promisor is not required to make any payments if the promisee suffers no loss.

Lawful object and consideration

A contract for indemnity can only be executed for a valid purpose and a lawful consideration. A contract of indemnity cannot be construed as a contract to engage in unlawful behaviour or conduct that is against public policy.