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“Motor Vehicles Act, 2019 (Amendment) - Third Party Insurance”

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ABSTRACT

The Motor Vehicles Act came into action in 1988. In 2019, the said act was amended and changes were made to several aspects of the act, including the aspect of Third party insurance. This paper discusses the difference between the provisions related to Third party Insurance in both the acts. It aims to analyze the probable impacts due the regulation of the new act; such as – i.) The insurance liability may reduce and for higher liability limits, the premium might be higher, thereby bringing some improvement to loss ratio, ii.) There will be elimination of the ill intent of taking a cover and then not honoring the premium and present the obtained cover note as the evidence of insurance to prefer claims, iii.) Compensation may marginally go up. It seeks to discuss how the scope of an individual in terms of insurance has increased with the 2019 amendment. It aims to analyze and scrutinize the Third party insurance provisions of the 2019 act and find out where it faces exiguity. It has also attempted to suggest further reforms, which might address the lacking areas of the present act.

Keywords: *Compensation, India, Liability, Motor Vehicle Act, Third Party Insurance.*

1. INTRODUCTION

In India, every vehicle is needed to be registered under the Motor Vehicles Act. The act deals with the legislative provisions regarding licensing of drivers/conductors, registration of motor vehicles, control of motor vehicles through permits, special provisions relating to state transport undertakings, traffic regulation, insurance, liability, offences and penalties, etc. It also has provisions for Third party insurance. Under the prevailing act, all vehicles registered under it should have a valid insurance to drive on the road. Insurance is a contract, whereby, the insurer undertakes in return of a consideration, the premium to pay the insured a sum of money in the event of happenings at a specified uncertain event. This is an essential under the Motor Vehicles Act. In case of a third party insurance the beneficiary is someone other than the two contracting parties.

2. THIRD PARTY INSURANCE

Two main types of insurance are commonly associated with the damages system. These are the third party insurance system and the more commonly used first-party insurance. Insurance companies refer to third party insurance simply as ‘liability insurance’. Third-party offers consideration against claims of damages and losses sustained by a driver who is not the insured, the principal, and is hence not covered under the insurance policy. The driver who caused damages is the third party.¹

In a third party insurance policy, the insurance company is under agreement to indemnify the insured individual, in the event of him being held legally liable for damages done to a third party. In this case the three parties are, the insured person, the insurance company and the individual who has suffered damages (the third party, in this case).

Under section 145(g) of the Indian Motor Vehicles Act, 1988, ‘third party’ includes the government. In the case of National Insurance Co. Ltd. v. Fakir Chand², it was stated that ‘third party should include everyone (other than the contracting parties to the insurance policy), be it a

¹Julia Kagan, Third Party Insurance, Auto Insurance, Investopedia, June 25th 2019 , (Last Accessed: February 23rd 2020) , <<https://www.investopedia.com/terms/t/third-party-insurance.asp>>.

²National Insurance Co. Ltd. v. Faqir Chand and Ors. on 25 April, 1996 ACJ 111, AIR 1995 J K 91.

person traveling in another vehicle, or strolling on the road or a commuter in the vehicle itself which is the question of insurance policy.

Third Party Insurance and First Party Insurance are very different from each other. A person who is not a policyholder or the insurance company representative is the one who makes claim for Third party insurance . It occurs when the actions of first party causes injury to the third party. A first-party insurance claim is between the policyholder (the first party) and the insurance company (the second party). An example of a first-party insurance claim would be a homeowner who suffers fire damage to his or her home and can further claim with the insurance company to cover the damage and repairs.

2.1 Salient Features of Third Party Insurance

- i) Third party insurance has been deemed to be mandatory for all motor vehicles. In the case of *G. Govindan v. New India Assurance Co. Ltd.*³, it was stated that third party insurance was mandatory under said statute. This provision could not be overruled under any circumstances.
- ii) Third party insurance covers only the third party and the rest of the world but not the insured individual himself.
- iii) In case of an accident owing to which third party insurance has to be invoked, the beneficiary is mainly the injured third party and the insured individual only receives a nominal sum. In most cases the money is directly paid from the insurance company to the third party/injured party.
- iv) In third party insurance, there is no variation in the charge of premium with respect to damages incurred because the liability in question is bound to be legal liability and there is no way to predict the extent of possible damages.
- v) Third party insurance is based entirely on the proof of fault of the insured person (the pressure of proving this fault falls on the injured party).
- vi) Third party insurance includes legal aid and services.
- vii) Third party insurance is unpopular among insurance companies mainly due to the fact that the company does not know the maximum amount that might have to be paid in the event of an accident.

³G. Govindan v. New India Assurance Co. Ltd.

2.2 Historical Development

Motor Vehicles were being sold at massive rates after the First World War. Industrial revolution was at boom and the policies of liberalized economies and public policy as suggested by John Maynard Keynes with cross border trading were being employed by nations and thus cars were being sold at a very fast pace by that stage. Vehicles were relatively faster and readily available to consumers in this globalized market, yet there was still no compulsory form of car insurance anywhere in the world. This provision signifies that the harmed victim would scarcely get any compensation in an accident, and drivers had to face exorbitant costs for damage to their vehicle and property.

In 1930, the United Kingdom, first commenced a compulsory car insurance scheme through the Road Traffic Act. This ensured that all vehicle owners and drivers had to be insured for their liability for injury or death to third parties while their vehicle was being used on a public road.⁴ Germany enacted similar legislation in 1939 called the "Act on the Implementation of Compulsory Insurance for Motor Vehicle Owners."⁵ These were the first amongst much legislation to follow and thus formed the crux of liability insurances. The enactments were designed to aid both the sufferer and suffering's source. This is because several times intention and action may not coincide and thus the plight of a non-deliberate actor who has committed a mistake which led to the accident should also be considered.

3. VEHICULAR INSURANCE IN THE UK AND THE USA

The United Kingdom Government took up several steps in order to make the compensation more easily available to the injured while keeping in mind the plight of the injury cause. The enactments have been written and ratified based on the impact and patterns of various English statutes and from the report of Motor Vehicles Insurance Committee, 1936-1937. Before 1930, there was no law which made Insurance compulsory from the perspective of third party rights in England. In the event of an accident, damages were extracted by the person who had caused the accident. However, it was seen that, in many cases, the motorist/owner of the offending vehicle, was unable to pay the damages to the injured party, or, if there was a death, to the family or the dependants of

⁴"Road Traffic Act 1930", <www.legislation.gov.uk>. Retrieved 28 March 2018.

⁵"Germany's law on compulsory motor insurance marks its 75th anniversary". Retrieved 28 March 2018.

the deceased. Due to this reason, various legislations were made and enacted. To deal with such instances, the Third Parties' Rights against Insurance Act, 1930 was enacted in England. In this act, it was provided under section 97 of the act of 1930 that the injured third party would be able to extract damages by directly suing the insurance company and not the person who caused the accident. In accordance with this, the Road Traffic Act of 1930 provided for the compulsory insurance for all motor vehicles. The major provisions of these acts were provided in sections 95 and 146 in the 1939 and the 1988 Acts respectively. It is of great importance that under sec 38 of the English Act, 1930, some aspects of third party insurance were made redundant. After this, in 1934, the second Road Traffic Act was passed. The intention behind this legislation was to satisfy the liability of the individual who had been insured. Under this Act, three actions were mentioned. The first was to satisfy the damages incurred against the insured. The second was that, in the event that the insurer did not discharge the liability thrust on it, the claimant reserved the option to file a suit in court against the insurer. Be that as it may, in certain events, namely, what was given in Section 96(2)(a) which corresponds to Section 149 (2)(a) of the 1988 Act, the company or the insurer could also put up a defense in court against its liability. The third action accommodated was contained in Section 10(3) of the Road Traffic Act. Under this provision, the insurer could defend his liability to be within the law on the specific ground that insurance policy was obtained by the insured person by means of misrepresentation or fraudulent practices. This provision also found a position in Section 149 (2) (b) of the Act of 1988. While passing the Acts of 1939 and 1988 respectively, all the three actions were embedded in Section 96 of the Act of 1939 and Section 149 of the 1988 Act.

In the United States of America there are different regulations for each of the 50 states and other territories, with each U.S. state having its own mandatory minimum coverage requirements for both bodily injury and property damage, except New Hampshire and Virginia. Third Party Insurance or Liability insurance occurs where an insured driver causes bodily harm to a third party and the insured driver is deemed responsible for the injuries.⁶ However, in some jurisdictions, the third party should first exhaust coverage for accident benefits through their own insurer (assuming they have one) and/or would have to meet a legal definition of critical damage to have the right to claim (or sue) under the insured driver's (or first party's) policy. If the third party sues the insured

⁶ Wieder JW. (1956). Reviews of Publications. *Proceedings of the Casualty Actuary Society*.

driver, liability consideration also covers court costs and damages that the insured driver may be considered accountable for. Usually, the minimum required by law is third party insurance to protect third parties against the financial consequences of loss, damage or injury caused by a vehicle.⁷ Penalties for not procuring insurance vary by state. These might include a significant amount of fine, license and/or registration suspension or abrogation and perhaps jail for a substantial period.

4. MAJOR CHANGES IN THE AMENDMENT ACT, 2019

4.1 Improvement in Loss Ratio

The 2019 amendment brought about several changes; one amongst which was the substantial decrease in the insurance liability and for higher liability limits, the premium shall be higher, thereby bringing some improvement to the loss ratio. The third party insurance provides less coverage and thus will have fewer premiums at low rates. Along with this, the claim of insurance under third party plan will be provided only in conditions of no fault liability that means that the injury causer did not intend to cause injury to the injured or first party. It also included the bodily injury, accidental death and property damages which are caused by the policyholder. The comprehensive plan which has a wider insurance policy has higher and more premiums. Along with this, it served self and third party damages with compensation for more than vehicular collision in both man-made and natural calamities. This gives the purchaser the option to choose the risk they want to take and has set terms and conditions under each premium package that they opt for. Therefore, the loss ratio for insurance companies decreased which helped them to maintain profits as well as market image.

4.2 Elimination of Ill Intent

The 2019 Amendment changed the document requirement of policy claim for third party insurance. Previously under Section 147, there was a requirement for a policy to cover liability in respect for the death of an employee or a third party. This rule was changed in the 2019 amendment wherein, a cover note is to be issued by the insurer and the period of validity of the cover note has

⁷ "Virginia Insurance Requirements", Virginia Department of Motor Vehicles. Retrieved 2011-03-10.

been set to seven days. Thus, the parallel operation of two documents has been tried to be avoided and stipulation has been made to the period of validity of the cover note. This change removed the likeliness of a possible fraud by eliminating ill intent of taking a cover and then not honoring the premium and presents the obtained cover note as the evidence of insurance to prefer claims

4.3 Marginal Increase in Compensation

The 2019 Amendment might marginally increase the compensation. The scope of an individual in terms of insurance has increased with the 2019 amendment. The Section 161 of Chapter XI of the Act purviews of individuals who can suffer harm and thus more compensation has to be granted to the individuals who suffered. *Urmila Halder v. New India Assurance Co. Ltd. & Ors*⁸ formed the base of this amendment. It was proposed that the 1988 Act, inter alia, was introduced to make "provision for enhanced compensation in cases of 'no fault liability' and in 'hit and run' motor accidents'. It was found and declared that the act must aim at providing compensation. This shall be done through Section 165 and 166 read with Section 168. Secondly, the act is meant to provide this compensation constructed on the proposition of "no-fault" liability, that is, regardless of any wrongful act, neglect or default of the person for whose death the claim is made, compensation is payable by the owner of the offending motor vehicle or its authorized insurer, as the case may be, which is traceable in Section 163-A; and the third concerns providing compensation in 'hit and run' motor accidents where the identity of the wrongdoer cannot be identified despite reasonable efforts therefore, as in Section 161 read with Sections 162 and 163. Along with this purview of individuals to whom compensation can be granted increased as well property damages are also awarded compensation. The 2019 Amendment brought about several changes in the Motor Vehicle Act and gave a new facet to it which tends to bend towards the sufferer's compensation increase. The new act states that there will be a ten-fold increase in the insurance compensation which is from ₹ 50,000 to ₹ 5 lakh. The insurance claims process will be simplified and cleared within a month. The minimum compensation for hit-and-run cases will be increased from current ₹ 25,000 to ₹ 2 lakh in case of death and to ₹ 50,000 from ₹ 12,500 in case of grievous injury.⁹

⁸ (2011) 4 SCC 606.

⁹ Car and Bike Team, *2019 Motor Vehicle Amendment Bill: All You Need To Know*, NDTV - News, August 01st 2019, (Last Accessed: February 23rd 2020), <<https://auto.ndtv.com/news/2019-motor-vehicle-amendment-bill-all-you-need-to-know-2078993>>.

5. CASE ANALYSIS

The Insurance companies often try to avoid their liability to compensate for the Third Party Insurance. Certain defenses which are available to the companies provided knowledge and connivance has been proved are as follows-

- i) if the vehicle is used for the purpose of hire
- ii) if the vehicle is used for racing and speed testing
- iii) use of vehicle as a transport vehicle without requisite permit
- iv) driver not holding valid license or has been disqualified from holding such license
- v) material fact had not been disclosed while taking policy thereby making it void.

There is no other defense available to the Insurance Companies except for the ones cited above. These defenses however are not absolute. The Apex Court in recent times has said that even if defense has been pleaded and proved by the Companies, they are still liable to make payment to the third party, however such amount can be recovered from the insurance owner. In several landmark cases the courts have emphasized that the breach of condition of policy or violations of Section 149(2) are not enough to fulfill the burden of proving defense, the Insurance Company must also show that the violation has occurred with the knowledge or connivance of the insurance owner. Some of such landmark cases have been discussed.

In *Sohan Lal Passi v. P. Reddy*¹⁰ the previously easy defense of the driver not holding a valid license has been weakened by the Supreme Court. It was held by Honorable Justice N.P Singh it was necessary for the insurance company to prove that the owner had knowledge of the fake driving license held by the driver. Such reference if not proved would not absolve the Company from the insurance liability.

In *National Insurance Co. Ltd v. Swaran Singh &Ors*¹¹, the bench headed by former CJI VN Khare held the previously cited judgment and further stated that breach of the conditions of the policy even within the scope of Section 149(2) should be a material one and should be the effect cause of the accident.

¹⁰1996 SCC (5) 21.

¹¹2004 3 SCC 297.

In *Oriental Insurance Co. v. Inderjit Kaur*¹² the Honorable Supreme Court held that even if the insurer had issued a policy before receiving its premium, the Company would be liable to pay the Insurance claim. It could not claim defense pleading that the contract was voidable due to non-payment of the premium.

The Madras High Court in *K. Gopal Krishnan v. Sankara Narayanan*¹³ held that an insured is not bound to take out a third party insurance risk policy for claiming the damages for the injury of the pillion rider. If such a rider is injured the company shall hold no liability unless the policy covering such risk is obtained by the insurer.

In the case of *S. Sudhakaran v. A.K. Francis*¹⁴, the owner of the insured vehicle had sold his vehicle to another individual. However the transfer of the ownership was not carried out in compliance to statutory provisions. The transferee had the physical possession of the vehicle but the documents were still in the name of the previous and legal owner. The owner had retained the policy of insurance and had demanded a claim from the company. The Kerala high court held that the company was not liable to indemnify the owner.

The case of *United India Insurance Company Ltd., Chennai v. Sathish Kumar & Another*¹⁵ dealt with the eligibility of the pillion rider in claim for third party insurance. In this case the counsel for the appellant submitted to the Madras High Court that there is no liability on part of the Insurance Company to indemnify the pillion riders. The Company is not liable to pay compensation in the absence of additional premium. He further argued that the tribunal under which this appeal case was earlier, was wrong in holding the occupant of the vehicle as the third party. Honorable M.S. Justice V.M. Velumani pronounced that a pillion rider in a two-wheeler is a gratuitous passenger and cannot be held to be a third party. Thus, the Insurance Company has no liability to compensate the claimant.

Indian laws are impacted by international jurisdictions especially the United Kingdom's decrees as India has built its motor vehicle act on the 1930 act of our colonizers. One such judgment of great significance in contemporary time is *R & S Pilling Phoenix Engineering v UK Insurance*

¹²AIR1998 SC 588.

¹³AIR 1968 Mad 438.

¹⁴AIR 1997 Ker 26.

¹⁵C.M.P.No.20384 of 2018.

Ltd.¹⁶ In this case the main issue was whether a third party who got injured in the course of repairing the vehicle of the insured, was eligible for third party insurance under the policy of the vehicle owner. In this case, Lord Hodge held that if an accident occurs due to the negligence of the owner of the insurance as it was in this case that is; the vehicle caught fire as the owner did not maintain or repair it properly; the insurance company would not be liable to pay compensation to the third party who suffered an injury to his body and/or to his property.

These cases have developed and shaped the third party insurance regulations in India and the UK. They are landmark in nature because they answered the substantial question of law while understanding the plight of both the injured and the compensation granter.

6. COMPARING THE AMENDMENT ACT OF 2019 WITH 1988 ACT

The 2019 Amendment has reduced the limits of the Third person insurance liability. Section 147 stated that the insurance policy must be issued by a duly authorized insurer and insured the classes of persons eligible for claims to the extent specified in Sub-Section 2 of the same act. The limit for Third party insurance had also been specified under the said provision. Sub Section 2 ensured the recovery of the amount of the liability incurred and in respect of damage to the property of the third party, limited the compensation to rupees six thousand.

The new amendment however has substituted the Sub Section 2 with a sub section which states that the Central Government shall prescribe a base premium and liability of the insurer in relation to such premium for the purposes of death or grievous hurt to a third party. As a result, the insurance liability shall reduce and the premium shall be higher for higher liability limits. This in turn would bring improvement to the loss ratio.

CONCLUSION AND SUGGESTIONS

After rigorously scrutinizing the 2019 Amendment act, analyzing landmark case laws, and conducting a comparative analysis of the 2019 amendments with the 1988 provisions, certain conclusions can be

¹⁶[2019] UKSC 16.

drawn upon the aspect of Third party insurance of Motor Vehicles Act. Upon careful study of the new Act, it can be said that there is a substantial decrease in insurance liability thereby improving loss ratio which will help the companies maintain profits as well as goodwill. The 2019 amendment has a scope of increasing the marginal compensation. An evaluation of Sections 161,162,163,165,166,168 shall make one realize that the scope of an individual in terms of insurance has essentially increased, not only has the compensation margin increased but also property damages shall be granted compensation. An analysis of the relevant case laws show how the defenses available for the insurer have evolved overtime and the grey areas present in them have been well addressed by the judiciary of this country. The new amendment has also brought a change in the documentation requirement for claims of third party insurance, making the process more definite by fixing the period of validity of the policy cover note issued by the insurer.

The new amendment in the process of bringing in several changes has addressed a number of aspects in which the previous act was lacking. However, there still remains scope for improvement of the said Act. The paper has tried putting some suggestions regarding the same. Several changes in the 2019 Act are very radical in nature and demand immediate enforcement. The legislation provides for stricter punishment for various traffic-related offences as well as higher penalties in motor vehicle accidents. These laws were though beneficial but due to unawareness and information gap between the government and the citizens several of the provisions were shunned. Also the weak and corrupt enforcement mechanism caused several drawbacks. But at the same time, the maximum compensation a claimant can get from the government on no-fault basis is Rs 5 lakh in cases of death, Rs 2.5 lakh in cases of grievous hurt and the 'No-fault victims' has been enhanced from Rs 25,000 to Rs 2 lakh in case of death, and from Rs 12,500 to Rs 50,000 in case of bodily injuries. This limit is also a hindrance to the proportional compensation aspect of equity and justice. The third party coverage provides benefits to both the injured by increasing the scope of individuals who may be awarded the compensation and the Insurance companies by differentiating the insurance types that one might opt by setting rules terms and conditions. But no relief has been granted to the unintentional actor who did not injure on any purpose but has to pay severely high compensation rates. Thus this provision is missing from 2019 Amendment act. The above recommendations are some loopholes in the 2019 Amendment Act and they should be considered to build justice on the principles of equity and good conscience.

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