

## THE CONVERGENT RISK AND THE NEED OF COMPULSORY INSURANCE: A LEGAL ANALYSIS AND INTERPRETATION UNDER MOTOR VEHICLE ACT, 1988

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### ABSTRACT

*An Insurance is a contract between the Insurance company and Insured person to indemnify the loss. In the advent of the growing demands of the world economic forums and the banking sectors it has discursively and unrelatedly remained less penetrative to fill the void amongst the esteeming challenges opposed due to compulsory Insurance policies and standards established in third-party motor insurance claims resulting to inimical factors leading to impending risk to the people, property, and the society at large. The strenuous policies to minimize the gap of such cautious facets involving risk and aggrandizing stance of the Motor Vehicle legislations including the Act of 1988 are not at par with the evolving trends and the issues compounding from the damages or loss incurred by the victims of an accident or mishaps in their course of employment in any establishment governed by the Workmen Compensation Act, 1923 and the Public Liability Insurance Act, 1991. This paper encapsulates the comprehensive medium to douse the risks and additionally review and evaluate different types of safeguarding mechanisms available to the victims as well as to determine multifaceted Insurances and the risks involved in the context of India. Further, It expounds upon the narratives and foremost effects of compulsory Insurances in the area of motor vehicle accidents claims and the inception of the third- party liability insurances and the pivotal understanding of the principle of no-fault liability. This paper attempts to explore all new adaptations inherited for evolving the compulsory Insurance policies which are still pervasive to the limited understanding of the complexities and methods by which it could be befitting to avoid intangible risks in the present model structure of the Insurance guidelines present in the society and the legal reasonings to corroborate the notion with the help of the decided legislations and cases.*

**Keywords :-** Compulsory Insurance, Mandatory Insurance, Indemnity, Motor Insurance Risk, Liability, Information Problem, Insolvency.

### CHAPTER I

#### **INTRODUCTION: COMPULSORY INSURANCE AND DELIBERATE RISKS AFFECTING THE THIRD-PARTY.**

An Insurance is a contract under which the Insurer undertakes and assumes to protect the Insured from a specific loss if it occurs. The Insured is the person who is afraid of uncertain loss or damage which is called the “**risk of loss**”, and the Insurer undertakes to indemnify the Insured from that apprehended

loss if it occurs for a consideration called the “**premium**”, which the Insured has to recompensate or pay. A person may take out risk of loss caused by loss of life, that is death, or from any injury to his body, loss of property which may not be related to the act done by person himself but on the contrary, by the involvement of the others.<sup>1378</sup> The government in

<sup>1378</sup> Julia Kagan, *Compulsory Insurance Definition, Types, How it Works*, INVESTOPEDIA, (Apr. 03, 2024, 10:05 AM), [http://Compulsory Insurance Definition, Types, How It Works \(investopedia.com\)](http://Compulsory Insurance Definition, Types, How It Works (investopedia.com)).

such cases for the purpose of social welfare legislation endeavors to protect the interest of the party suffering the loss on the negligence caused by the second party, in such cases government act as an Insurer party to indemnify the loss suffered by the Third party, caused by second party (the Insured party), such contract in law is termed to be Compulsory Insurance Contract.

A compulsory insurance contract is a contract in which the government enters into a contract with the second party wherein the government acts as an Insurer and the second party is the Insured party, to indemnify the third party which has suffered any loss/damage caused due to negligence by the second party (the Insured party). A compulsory insurance is a kind of Insurance which an individual or businesses is legally obligated to purchase and as such these Insurances are compulsory for any businesses or the individuals who are engaged in certain financially dicey activities i.e., operating an automobile or operating a business at different establishments.<sup>1379</sup> A compulsory insurance is supposed to protect the accident victims against the cost of recovering from an accident that is caused by someone else.

In India, the most commonly known compulsory insurance is the third-party motor insurances and the public liability insurances. The third-party motor contract is the insurance contract in which the government act as the Insurer along with the insurance companies to indemnify the third-party for the loss suffered due to the negligence act of the second party i.e., the Insured party. The other segment of compulsory insurance is governed under the *Public Liability Act, 1991* read with *Principle 13 of the Rio declaration*<sup>1380</sup>, which provides immediate relief to the victims of the accident while handling any hazardous substance or

matter connected therewith or incidental thereto.

Besides, motor vehicle insurances which are not limited to vehicles – motorcycles, commercial vehicles etc. are automotive insurances where a contract unlike other insurances, it is compulsory for the purchasers to get their vehicle Insured. Hence, this is the class of insurance strategy which in majority is recognized as compulsory for all motorized vehicles to imbibe insurance policy against the third-party liabilities before any impingement or hinderance resulting to risk and harm the Insured individual.<sup>1381</sup>

The basic principle of this mandatory insurance is to safeguard the interest of the person from suffering loss or injury due to the fault acted by the someone else.<sup>1382</sup> The government in such situations act as an Insurer whereby, the loss witnessed by the third party or the worker in some factory or establishment is unknowable so as to compensate or indemnify the loss endured at such interval. Moreover, the pivotal assertion supporting the cause of compulsory insurance are the complications with the determination of the information or externalities leading to insolvency of the potential injurer towards the third-party or the claimant in majority of the circumstances.<sup>1383</sup>

### **1.1. NATURE OF COMPULSORY INSURANCE AND THE PROCESS OF THIRD-PARTY LIABILITY INSURANCE.**

The coverage and the safeguards available to the individuals under the ambit of compulsory insurance are constrained but limited under these given circumstances:

<sup>1381</sup> ACCIDENT AND MOTOR VEHICLE INSURANCE , NATURE DISCLOSURE, TERMS AND CONDITIONS-CLAIMS AND RECOVERY –THIRD PARTY INSURANCE- COMPULSORY MOTOR VEHICLE INSURANCE, ACCIDENT INSURANCE, [http://18BCO32C-U4.pdf\(gaobe.ac.in\)](http://18BCO32C-U4.pdf(gaobe.ac.in)) (last visited Mar. 20, 2024).

<sup>1382</sup> Yueyun Chen (USA), Dongmei Chen (China), *The Review and Analysis of Compulsory Insurance*, 4 INS. M. & CO. ANAL. & ACT. COMP., 6, 10-12 (2013).

<sup>1383</sup> Prof. Dr. Michael G. Faure, *Economic Criteria for Compulsory Insurance*, MAASTRICHT FACULTY OF LAW, MAASTRICHT UNIVERSITY ( Mar. 21, 2024, 11:30 AM), <http://Economic Criteria for Compulsory Insurance by Michael G. Faure :: SSRN>.

<sup>1379</sup> Charles Bains, *What is Compulsory Third-Party Insurance?*, INSURANCE NOON, ( Apr. 03, 2024, 10:40 AM), <http://What is Compulsory Third-Party Insurance - Insurance Noon>.

<sup>1380</sup> UNITED NATIONS “ Conference on Environment and Development” (UNCED), 1992 proclaiming Principle 13 wherein the state shall develop national laws regarding liability and compensation for the victims of pollution and other environment damage.

1. An application is needed against the vehicle owner from the victim or the legal representative of the deceased for Third party liability compensation.
2. After successful submission of the application, an FIR has to be filed. A copy of the FIR along with the record of expenses incurred by the victim must be maintained for converging future inferences.
3. The third party then gets the compensation for the entire amount or the amount that is decided by the Court of law. Thereafter, the third-Party insurance claims have no maximum capping. However, IRDA (Insurance Regulatory and Development Authority of India) has limited the maximum cover for property damage to Rs. 7.5. lakh.<sup>1384</sup>
4. The death or bodily injury of any person including the owner of the goods, or his authorized representative carried in the vehicle or carriage.
5. If there is any damage to any property of a third party.
6. If such an incident occurs resulting in the death or bodily injury of any passenger of a public service vehicle.
7. The liability arising under the Workmen's Compensation Act, 1923 in respect of death or bodily injury of the paid driver of the vehicle, conductor or ticket examiner (public service vehicles) and workers carried in a goods vehicle.<sup>1385</sup>
8. Third party Insurance or the compulsory insurance are the mandatory requirement under the statutes of banking and insurance laws including motor vehicle legislations in India. The provisions of such insurances cannot be overridden by any clause in the insurance policy. Therefore, it obliges the policyholder to comply with the legal requirements and standards established by the third-party insurance.
9. Although, this third-party insurance is a basic coverage option, it allows the policyholders to accentuate sufficient financial protection against the injuries or damages they might incur or inflict on the other individuals in any accident or subsequent events.<sup>1386</sup>
10. Compulsory insurances do not cover injuries to the insured himself but to the rest of the world who may get injured by the insured.
11. The beneficiary of the compulsory insurance is the injured person; the insured person is only the nominally beneficiary of the policy.
12. Compulsory insurances are the liability-based insurances. In this type of insurances when the event insured against happens, the insured would be exposed to some liability to third parties.
13. The government, being the head of domain, acts as the insurer along with the insurance agencies.
14. Compulsory insurances protect the social welfare legislation by indemnifying the loss.
15. To safeguard the third party from damage and loss or fault of the second party.
16. Compulsory insurances on one hand also safeguards the insured from the risks of liability imposed by the claims of the damaged person or the third party. If a person has a valid insurance, then the liability imposed will be covered by the insurance agencies and not the Insured person.

The law specifically applies towards the Insured person unless there is a contractual obligation between the Insurer and the Insured to cover the former personally for the damages or the loss incurred. The third-party insurance policy is

<sup>1384</sup> THIRD PARTY INSURANCE IN INDIA: COVERAGE, CLAIM AND EXCLUSIONS, PAISA BAZAAR, <https://www.paisabazaar.com/motor-insurance/third-party-insurance/> (last visited Mar. 26, 2024).

<sup>1385</sup> INSURANCE LAW AND PRACTICE, MODULE 3, THE INSTITUTE OF COMPANY SECRETARIES OF INDIA, [http://InsuranceLawandPractice.pdf\(icsi.edu\)](http://InsuranceLawandPractice.pdf(icsi.edu)) (last visited Mar. 24, 2024)

<sup>1386</sup> Kajal Bind, *Kinds of Insurance Under Motor Vehicle Act, 1988*, LAW COLUMN (Mar.25, 2024, 11:45 AM), <http://Kinds of Insurance Under Motor Vehicle Act,1988 | Law column.>



a policy wherein the Insured person does not get any compensation, but it is a legal obligation whereby insurance company indemnifies the Insured person but does not guarantee or compensate for his own personal damages or injuries sustained in the performance of the comprehensive or overarching policy coverage.<sup>1387</sup>

## CHAPTER II

### **THIRD PARTY OR COMPULSORY INSURANCE UNDER MOTOR VEHICLES ACT, 1988.**

In terms of law of torts if a person drives his vehicle negligently which causes injury or death to a third party, then the party whose negligence caused the damage is liable to the third party. The driver in the case of tortious liability is the servant who is in service or is employed by the owner of the vehicle and the actual delinquent, the driver is often a person having no means or possesses not much financial strength to support the dependents of the disabled or the deceased in the case of any misnomer caused by his negligence. Therefore, in the Common law perspective and standpoint such erroneous is recognized as 'vicarious liability' which is applicable to the owner of the motor vehicle wherein, the master is liable for the tortious acts of the servant provided that, the servant does such act in the course of his employment.<sup>1388</sup> In *Pushpabai sudershin v. Ranjit G and P co*<sup>1389</sup>, it was held that the determining factors so far as the liability of the master for the act of his servant is concerned in whether the act was committed by the driver 'in the course of employment' or not that it does not depend on lawful or unlawful nature of his master or in violation of the rules framed under the statute. In *Imperial Chemical Industries v. Shotwell*, "the doctrine of vicarious liability has not grown from any very

clear logical or legal principle, but from social convenience and rough justice.<sup>1390</sup>

A third-party insurance is a policy under which the insurance company agrees to indemnify the injured party which is the third party on behalf of the second party which is the Insured party on his negligence. In India under the provisions of the motor vehicle 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 and for the Insurer's business motor purpose should be Insured. Additionally, third-party insurance is a policy purchased for the protection against the actions of the third party. This insurance is purchased to indemnify the third-party claims of damage that has been caused. The owner of the motor vehicle is legally bound and is liable for any injury or damage to Third party life or property caused by or arising out of the vehicle use in a public place.<sup>1391</sup> The motor vehicle insurance or all third-party rights and liabilities with respect to the claims and safeguards are interoperable and covered under the Motor Vehicle Act, 1988, in the context of India. Subsequently, the sections from 145 to 164 of the Act mentioned under Part XI expounds upon the insurance of motor vehicle against third party risks and solely emphasizes with the provisions and safeguards available and related to third-party.<sup>1392</sup> Further, in the case of *Govindan v. New India Assurance Co. Lt.*,<sup>1393</sup> it was held that the third-party insurance is compulsory under the law which cannot be overstated or overridden by any clause mentioned in the policy. Seemingly, there are certain specific requirements to be followed when an aggrieved person approaches to claim for compensation or damages as per the Indian laws. An authorized Insurer has a duty to Insure persons or class of persons against death or bodily injury to person or to any passenger of public

<sup>1387</sup> Sonia Maan, *Insurance of Motor Vehicles Against Third party Risks*, THE LAW BRIGADE (PUBLISHING) GROUP ( Mar. 23, 2024, 11:20 AM), [http://Sonia.pdf\(thelawbrigade.com\)](http://Sonia.pdf(thelawbrigade.com)).

<sup>1388</sup> Gerhard Wagner, *Tort Law, and Liability Insurance*, 31 INT. ASS. ST. INT. ECO. 278, 279-282, (2006).

<sup>1389</sup> *Pushpabai sudershin v. Ranjit G and P co.*, AIR 1977 SC 1735.

<sup>1390</sup> *Imperial Chemical Industries v. Shotwell*, [1964] 2 All ER 999(HL).

<sup>1391</sup> Kalpalathikaa M., *Motor Vehicle Insurance: Rights of Third party against Insurers*, IPLEADERS (Mar. 27, 2024, 3:30 PM), <http://Motor vehicle insurance : rights of third party against Insurers – iPLEaders>.

<sup>1392</sup> Prarthana Vasudevan, *Rights of Third Parties in the Motor Accidents under the Insurance Act*, LAW COLUMN (Mar.28, 2024, 11:45 AM) <http://Rights of Third Parties in the Motor Accidents under the Insurance Act | Law column>.

<sup>1393</sup> *Govindan v. New India Assurance Co.Lt.*, (1999) 3 SCC 754.

service vehicle and any damage to goods carried or procured in the manner of conveyance carried by or to any property of third-party vehicle cause by the use of vehicle in public place<sup>1394</sup> and moreover, such policies will cover any liability or damages inflicted by any accident up to the limit of the liability incurred and a limit of rupees six thousand, in case there is any damage or breakdown of the property belonging to the third-party.

The Act of 1988 also provides for the transfer of certificate of insurance under Section 157 wherein one party wishes to transfer the ownership of the vehicle and has an obligation to transfer the insurance policy to the new owner of the vehicle after the successful transfer. The policy shall be deemed to be transferred to the new owner from the date of its transfer or conveyance. And such a procedure for the transfer of the vehicle to be completed within a period of 14 days from the date of the transfer to make necessary changes with the authority concerned. In the case of *Karnataka SRTC v. New India Assurance Company Ltd.*, the vehicle was not completely transferred and was given on hire under lease agreement by the registered owner. The Court determined the question of insurance company's liability and further held that an agreement for lease on hire cannot be said to be an excluded contractual liability and as a result the Insurer of the vehicle was held liable.<sup>1395</sup> Similarly, in *Rikhi Ram and Anr v. Smt. Sukhrania and Ors.*, the Court held that the liability of the Insurer does not cease to exist insofar as the third-party victims are concerned even if the transfer of the vehicle is affected without notice to the Insurer.<sup>1396</sup>

### **2.1. THE PRINCIPLE OF NO-FAULT LIABILITY UNDER THE MOTOR VEHICLE ACT, 1988.**

The Section 140 of the Act of 1988 deals with the principle of no-fault liability. The term 'no fault liability' means when an accident has occurred due to use of a motor vehicle and has caused either death or some sort of grievous injury or

damage, the owner of the vehicle is still liable to pay compensation even if it was alleged to involve his fault or accountability for the same. Similarly, sub-section (1) of Section 140 states that the claimant is not required to plead nor establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect, or default on the part of the owner or owners of the vehicles concerned or of any other person.<sup>1397</sup>

The concept of no-fault liability emanated for the first time before the bench of the acting Chief Justice A. Sambasiva Rao, in the case of *Haji Zakaria and Ors. v. Naoshir Cama and Ors.*, where the question was to determine whether or not the liability to pay the compensation can be levied upon the owners, even when there was no fault or negligent actions on the part of the owners. This was over-ruled by the Hon'ble Supreme Court of India and was of the opinion that there cannot be any liability imposed on the part of the owner and the driver of the vehicle when there was an absence of negligence on their behalf.<sup>1398</sup> The Principle of no-fault was developed to provide the victim with some sort of relief in case of hit and run and other matters which may invoke this principle to justify the claims of the victims. The denial of any compensation over the fact that there was a contributory negligence on the part of the victim and the driver of a vehicle which was not established beyond any reasonable doubt further defeats the rationale of social justice and so the provisions were assimilated to decipher contributory negligence into consideration.<sup>1399</sup> There exists a slight difference between no-fault liability and the principles of strict liability wherein the compensation in the former is fixed, whereas the compensation amount in the latter is not fixed but is upon the discretion of the Court of law. Similarly, in the

<sup>1397</sup> Mohd Aqib Aslam, *The Motor Vehicles Act, 1988. An Analysis*, LEGAL SERVICE INDIA (Mar. 29, 2024, 11:40 AM), [http://TheMotorVehiclesAct,1988.AnAnalysis\(legalserviceindia.com\)](http://TheMotorVehiclesAct,1988.AnAnalysis(legalserviceindia.com)).

<sup>1398</sup> *Haji Zakaria and Ors. v. Naoshir Cama and Ors.*, AIR 1976 AP 171.

<sup>1399</sup> AISHWARYA SANDEEP, *Fault and No-Fault Liability under Motor Vehicle Act*, <http://FaultAndNoFaultLiabilityUnderMotorVehicleAct-AishwaryaSandeep-ParentingandLaw> (last visited Mar. 30, 2024).

<sup>1394</sup> Motor Vehicle Act 1988, § 147, No.59, Acts of Parliament, 1988 (India).

<sup>1395</sup> *Karnataka SRTC v. New India Assurance Company Ltd.*, (2016) 2 SCC 382.

<sup>1396</sup> *Rikhi Ram and Anr v. Smt. Sukhrania and Ors.*, AIR 2003 SC 1446.

case of *Minu B. Mehta and Anr. v. Balkrishna Ramchandra Nayan and Anr.*, the Supreme Court overruled the verdict of the Andhra Pradesh High Court and Bombay High Court and ruled that the owner of the vehicle or the company of the vehicle Insurer cannot be held liable unless there is a negligence on the part of the owner or the driver of the vehicle.<sup>1400</sup> Also, in the case of *A. Shridhar v. United India Insurance Company Ltd. & Anr.*, the Apex Court was of the opinion that where an accident is caused due to oil spilling on the road, negligence would be on the part of the driver only and not upon the owner or the other. In such circumstances, the Insurer would not be liable, the compensation of the liability shall be on the basis of no-fault principle.<sup>1401</sup>

Moreover, the pivotal court also decided in the case of *Eshwarappa @ Maheshwarappa & Anr., v. C.S. Gurushanthappa & Anr.*, wherein it held that Section 140 of the Act of 1988 is intended to provide for an immediate relief to the victim or the legal heirs or legal representatives of the deceased person in an event of an accident and so the claim made under this particular section is paid at the threshold of the case proceedings which is to be determined by the Court of law.<sup>1402</sup> Also, in the case of *Manjit Singh v. Rattan Singh*, the court in this following case held that the amended section 140 which has raised the amount of the compensation is applicable retrospectively. And so, for an accident leading to death, before the amended was made, the compensation was computed by the tribunal for Rs. 30,000/- was raised to Rs. 50,000/-. Hence, the compensation payable should be as per the law applicable as the time of the accident took place.<sup>1403</sup>

Wherefore, in essence, no-fault liability questions the accepted wisdom of who is at fault in road accidents. This legal structure

places a higher priority on rendering justice and adequate compensation to the victims regardless of the party responsible for the collapse or collision than it does on faulty disputes. Additionally, this legal concept arises in cases of accidents resulting from the driving of a motor vehicle or vehicles causing death or grievous hurt or injuries to the owner of the vehicle even in cases where there is no particular involvement of the owner in the first place.<sup>1404</sup>

## 2.2. RIGHTS AND DUTIES OF THIRD PARTY.

There are several distinct rights which are available to the third party in respect to the damages or loss incurred due to the impingement. They are as follows:

### 1. Right to receive information –

Insured or any person against whom a claim is made in relation to the liabilities incurred to any other person or the third party or whatever the case may be, any other person shall not refuse to provide the information to person claiming for such compensation or damages. The Insured would state whether he is Insured or was Insured or would have been Insured with respect to the liability by any policy issued to him by the insurance company. The third party may also require the information to ascertain whether any rights transferred to and vested with the Insured individual under Section 150 of the Motor Vehicle Act, 1988 or whether there exists any contractual obligations towards the insurance which directly or indirectly affects or becomes an impediment towards the claims made by the injured or the aggrieved person in this case.<sup>1405</sup>

### 2. Right to remain unaffected –

This particular right arises in cases where any judgment or award has been passed by the Court of law against the Insured person. Secondly, when the policy unlawfully inhibits the liability of the Insurer. Thirdly, in case of

<sup>1400</sup> *Minu B. Mehta and Anr. v. Balkrishna Ramchandra Nayan and Anr.* 1977 AIR 1248.

<sup>1401</sup> *A. Shridhar v. United India Insurance Company Ltd. & Anr.* 2011 (14) SCC 719.

<sup>1402</sup> *Eshwarappa @ Maheshwarappa & Anr., v. C.S. Gurushanthappa & Anr.* [2010] INSC 643 (18 August 2010).

<sup>1403</sup> Siddharth Gupta, *The Motor Vehicles Act, 1988: No Fault Liability*, LEGAL SERVICE INDIA, ( Mar. 30, 2024, 10:30 AM), [http://The Motor Vehicles Act, 1988: No fault liability \(legalserviceindia.com\)](http://The Motor Vehicles Act, 1988: No fault liability (legalserviceindia.com)).

<sup>1404</sup> Saumya Sudarshini, *No-Fault Liability: Key Insights from the Motor Vehicle Act, 1988*, THE LEX TIMES ( Mar. 29, 2024, 10:30 AM), <http://No-Fault Liability: Key Insights from the Motor Vehicle Act, 1988 — THE LEX TIMES>.

<sup>1405</sup> Motor Vehicle Act 1988, § 151, No.59, Acts of Parliament, 1988 (India).



settlement between the Insurer and the Insured person. Additionally, the Act of 1988 provides that an Insurer to disburse or compensate the third party any amount not exceeding the sum assured or any amount payable in respect of costs or any sum payable in respect of interest on that sum, in relation to a liability, if Insurer has obtained any judgment or award in his favour against Insured person. Thus, the claim of the third party cannot be bestowed due to any judgment or award passed against the Insured person wherein making this right not as absolute and therefore, the said prerogative cannot be exercised until or unless the Insured person was not conveyed or notified by the Court of law regarding the proceeding against him.<sup>1406</sup>

### **3. Transfer of right of Insured, against Insurer, to Third party –**

The liability raised against the Insurer by the third party in relation to an event which is secured by way of insurance policy by Insurer will be fulfilled by the Insurer. However, in case of insolvency of Insured person, his rights against the Insurer under the policy shall be transferred to and vest with the third party to whom liability was so incurred. Therefore, any condition in the insurance policy which directly or indirectly conveys or alters the right to transfer shall be of no effect until the insurance policy specifically mentions any contractual obligations of the Insured towards the Insurer. Thereby, upon transfer of rights, Insurer will be in the same position to fulfil the liability incurred towards the third party as he would have been to Insured person. In case the liability raised is more than the liability of Insured person to third party, Insured party has to pay the balance to the third party for any damages or loss incurred by him.<sup>1407</sup>

<sup>1406</sup> Motor Vehicle Act 1988, § 149 (1), No.59, Acts of Parliament, 1988 (India).

<sup>1407</sup> IIPRD BLOG – INTELLECTUAL PROPERTY DISCUSSIONS, [http://Rights\\_and\\_Liabilities\\_of\\_Third\\_party\\_in\\_Motor\\_Insurance\\_|http://IIPRD\\_Blog\\_-\\_Intellectual\\_Property\\_Discussions\\_\(wordpress.com\)\\_last\\_visited\\_Mar.\\_29,\\_2024](http://Rights_and_Liabilities_of_Third_party_in_Motor_Insurance_|http://IIPRD_Blog_-_Intellectual_Property_Discussions_(wordpress.com)_last_visited_Mar._29,_2024).

### **4. Liability of Insurer towards third party –**

In accordance with Section 147 (2) of Motor Vehicle Act, 1988 which explicitly mentions that the policies shall comply and cover any liability in respect of any accident up to the limit of amount of liability incurred and a limit of rupees six thousand, in case of any damage to any property of third party. In the case of *Bhoopathy v. Vijayalakshmi*, the Madras High Court was of the opinion that no bar is to be imposed as to when the liability of Insurer ceases to exist i.e. it is void. The Court held that when the vehicle was transferred, the insurance policy collapsed and was in abeyance wherein the insurance company of the second defendant was not liable for paying any damages to the plaintiff.<sup>1408</sup>

### **5. Hit and Run Motor Accident –**

The Insurer, from the time when the insurance policy was distributed to the Insured has the responsibility to compensate for the death or any grievous hurt resulting from hit and run motor accidents claims and cases which are reported or taken cognizance from such catastrophes. In case of death, a fixed sum of twenty-five thousand rupees and in case of grievous hurt, a fixed sum of twelve thousand and five hundred rupees to be given to the victim in accordance with the loss or impairment caused to them respectively. <sup>1409</sup> Subsequently, if the same amount has already been given to the legal heirs or person injured under any other provision of the Act then such compensation amount shall be refunded back to the Insurer.<sup>1410</sup>

### **6. No need to establish death or permanent disablement –**

The claimant is entitled to get compensation amount for the death or permanent disablement due to accident as per the second schedule of the Act of 1988<sup>1411</sup>, to person or his legal heirs and he is not required to plead or

<sup>1408</sup> *Bhoopathy v. Vijayalakshmi*, I.L.R. (1966) 2 Mad. 65.

<sup>1409</sup> Motor Vehicle Act 1988, § 161, No.59, Acts of Parliament, 1988 (India).

<sup>1410</sup> Motor Vehicle Act 1988, § 162, No.59, Acts of Parliament, 1988 (India).

<sup>1411</sup> HDFC ERGO, *Know your rights as a third party in case of motor accidents*, [http://Know\\_your\\_rights\\_as\\_a\\_third\\_party\\_in\\_case\\_of\\_motor\\_accidents\\_\(hdfcergo.com\)\\_last\\_visited\\_Mar.\\_29,\\_2024](http://Know_your_rights_as_a_third_party_in_case_of_motor_accidents_(hdfcergo.com)_last_visited_Mar._29,_2024).

establish the death or permanent disablement arisen due to any wrongful act or neglect or default.<sup>1412</sup>

**\*THE DUTIES** of the third party in claiming a sum from the Insurer in event of any road accident, a person i.e., third party has to face a complex claim process which starts emanates after the lodging of the FIR and obtaining the charge-sheet against the Insured person or as the case may be against the wrongdoer. Thereafter, the aggrieved person has the right to approach the claims Tribunal or Court of law where the case will be evaluated on the basis of the evidences presented or provided to the tribunal or the Court wherein the third party would be entitled to claim its amount of compensation after the court adjudicates the matter consequently.<sup>1413</sup>

### **1. Liability to Payback –**

In occurrence of any event causing death or injury to a person or property of third party which is falling under the ambit of Chapter XI of the said Act, if Insurer has paid the third-party excess amount than the amount in relation to which the liability was incurred or inflicted then the third party is liable to payback the excess or the exorbitant amount back to the Insurer or as the case may be to the Insured person based on the circumstances. Moreover, if the compensated amount has already been paid to the legal heirs or the person who has sustained any such injuries or damages then such compensation amount will be refunded back to the Insurer.

### **2. Duty to provide information –**

In accordance with the Motor Vehicle Act, 1988 it is essential for the Insured and the third party to furnish relevant information and details of the accident or event to the concerned authority or persons in case where the information mustered could help in determining the amount

of the damages or loss sustained by the third party or the person involved in the accident or mishaps. The information which is required to be furnished has to abide by the provisions of Section 160 of the Act of 1988 where there exists a duty of the third party to furnish particulars of the vehicle involved in the accident to the concerned authority for perusal and rectifications. Additionally, as per Section 134 (b) states that if the third party is a driver of the vehicle by means of which any accident took place, it is his liability to report the incident to the nearest police station immediately and without fail.<sup>1414</sup>

### **3. Duty to carry valid documents –**

It is the duty of the third party or individual to carry valid documents including the motor vehicle insurance contract to make compliance to all relevant provisions mentioned in Chapter XI of the Act of 1988. Therefore, the insurance companies are entitled to drop a claim if the vehicle was used for hire or reward, for organised racing and speed testing, where a vehicle is a transport vehicle and did not have permit to transport the goods on the date of the accident, without side-car being attached where the vehicle is a motor cycle. Insurance company, by an express clause, exclude by name, any person is disqualified for holding or obtaining licence or does not have licence, for the period of disqualification. Insurance company can also exclude its liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion.<sup>1415</sup> In case of *Zamindar Motor Transport Co. P. Ltd., v. New India Assurance Co. & Ors.*, it was held that the insurance company does not have any right to recover the amount of compensation from the appellant in respect of the compensation paid by it to the claimants.<sup>1416</sup>

<sup>1412</sup> Motor Vehicle Act 1988, § 163 A, No.59, Acts of Parliament, 1988 (India).

<sup>1413</sup> Chandralekha Mukerji, *Claiming Compensation under Third-Party Motor Insurance*, TOMORROW MAKERS, ECONOMIC TIMES ( Mar. 29, 2024, 10:30 AM) [http://Claiming compensation under third-party motor insurance \(indiatimes.com\)](http://Claiming compensation under third-party motor insurance (indiatimes.com)).

<sup>1414</sup> Supra note 22.

<sup>1415</sup> Khurana and Khurana, *Rights and Liabilities of Third Party in Motor Insurance*, MONDAQ ( Mar. 29, 2024, 11:40 AM) [http://Rights And Liabilities Of Third Party In Motor Insurance - Insurance Laws and Products - India \(mondaq.com\)](http://Rights And Liabilities Of Third Party In Motor Insurance - Insurance Laws and Products - India (mondaq.com)).

<sup>1416</sup> *Zamindar Motor Transport Co. P. Ltd., v. New India Assurance Co. & Ors.*, 2011 SCC Online Del 5451.



#### 4. **Duty to Compensate –**

In the event or occurrences where the claims are being made, losses should be minimised. These includes segregation of damaged property from the rest of the property, obtaining competitive quotes for the repairs/replacements that may be required etc. If the third party is found guilty of the losses/damages, then such misnomer should be held responsible so that the rights based on recovery are protected undeniably.<sup>1417</sup>

#### 2.3. **PREREQUISITES OF MOTOR VEHICLE INSURANCE.**

1. **Persons governed-** It applies to all persons. It includes any company or association or body of individuals, whether incorporated or not. The duty imposed under the section is absolute and the only person exempted is the passengers.

2. **He shall not use or allow any other person to use a motor vehicle –** Section 125 of the Motor Vehicle Act, 1988 lucidly states that no person should use the motor vehicle of any other person and also shall not allow any other person to use or operate his/her vehicle. This is because the liability for indemnity lies upon the owner of the car.

3. **The vehicle must be a motor vehicle-** The act defines a motor vehicle as any mechanically propelled vehicle adopted or to be used upon roads whether the power or propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer, but does not include a vehicle running upon fixed rails or a vehicle of special type adopted for use only in a factory or in any other enclosed premises<sup>1418</sup>. The insurance only covers the damages caused by the motor vehicle that is explained under Section 2(18) of the Motor Vehicle Act, 1988.

4. **The use must be in public place –** Public place has been defined as a road, street, way, or other place whether a thoroughfare or not, to which the public have a right of access, and

includes any place or stand at which passengers are picked up or set down by a stage carriage<sup>1419</sup>. The Indian definition includes a bus-stand, a taxi-stand, and any place of such kind, whether they are private or public sites. It is the users that make it a public place.

#### 5. **A policy of insurance should be in force**

– There must be a policy of insurance. It is imperative to know whether the policy was in force or whether the insurance company was liable to indemnify the user if any damage or injury has resulted from the vehicle at a time when no side car was permanently attached.<sup>1420</sup> The insurance company is only bound to indemnify the loss if the operator or the owner of the motor vehicle has a valid insurance policy for that motor vehicle.

The sturdiest understanding of the third-party insurance is that the defendant or the wrongdoer cannot be exempted on the ground that he/she has gone insolvent, the insurance policy clearly points that if a person owns a vehicle, then he/she is liable to pay the injured directly or through insurance company.<sup>1421</sup>

The Motor Vehicle Act, 1988 makes third party insurance mandatory under section 146 and the nature of this insurance comprises security of third-party interest and avoids casualty from the rash or negligent act of the other party. Therefore, the third-party insurance ideally secures the most notable aspect to safeguard the interest of the aggrieved person which as an outcome makes it mandatory to purchase such compulsory insurances.<sup>1422</sup>

### CHAPTER III

#### **PUBLIC LIABILITY INSURANCE ACT, 1991.**

'Public Liability' at this juncture does not imply the liability of the state or its agencies but it means the liability imposed by law as opposed

<sup>1419</sup> Motor Vehicle Act 1939, § 2(24), No.4, Acts of Parliament, 1939 (India).

<sup>1420</sup> *Carnill v. Roseland*, [1953] 1 QBD 486.

<sup>1421</sup> Sakshi Chhabra, *What is Third-Party liability in Vehicle Insurance?*, LAW INSIDER (Mar. 29, 2024, 4:30 PM) [http://What is Third-Party liability in Vehicle Insurance? - LAW INSIDER INDIA- INSIGHT OF LAW \(SUPREME COURT, HIGH COURT, AND JUDICIARY\)](http://What is Third-Party liability in Vehicle Insurance? - LAW INSIDER INDIA- INSIGHT OF LAW (SUPREME COURT, HIGH COURT, AND JUDICIARY)).

<sup>1422</sup> Pinky Dass, *All About Third Party Insurance Policy Law in India*, LATEST LAWS. COM (Mar. 29, 2024, 5:30 PM) [http://All About Third Party Insurance Policy Law in India By: Pinky Dass \(latestlaws.com\)](http://All About Third Party Insurance Policy Law in India By: Pinky Dass (latestlaws.com)).

<sup>1417</sup> Supra Note 30.

<sup>1418</sup> Motor Vehicle Act 1939, §2(18), No.4, Acts of Parliament, 1939 (India).

to self-imposed liability as entered between the parties to the contract. The Public Liability Insurance Act, 1991 is intended to provide immediate relief to the person affected by accidents occurring while handling any hazardous substance and for matter therewith and incidental thereto.<sup>1423</sup> In the era of development, with the growth of hazardous industries, risks from accidents processes and operations, not only the persons employed in such undertaking but also to the public who can also be in vicinity. The people who get affected by accidents in hazardous installations often belong from economically weaker sections of the society and thus suffer great difficulties because of delay in reliefs and compensation from such accidents. The workers and employees of hazardous installations are thereto protected under certain laws, but the members of the public are not assured of any relief except the legal long process. Therefore, to ameliorate the sufferings of members of the public due to accidents which take place in the hazardous setups, it was considered to be essential to provide for Mandatory Public Liability Insurance.<sup>1424</sup> Public Liability Insurance covers the individual or the company in the event of an accident that takes place on their premises. Such insurances apart from safeguarding the interest of the victim of the accident also provide cover and enable the industry or individual to discharge its liability to settle large claims arising out of a major accident. The major reason for enforcement of the Public Liability Act is the *Bhopal Gas Tragedy*<sup>1425</sup>, where due to leak of harmful and obnoxious gas thousands of people around the area of the industry died and also causing thousands of diseased persons till date. The absolute liability was struck down and strict liability was introduced so that any such

accident if takes place in future the industry should be held strictly liable.<sup>1426</sup>

The Act of 1991 was made compulsory as the basis of this legislation is not to provide benefit or any assistance to the Insured or the person himself but is applicable where there is a loss suffered by the third party due to the neglectfulness of the Insured party. Thereby, rendering a liability insurance for the protection of the interest of the third party in consonance with the compulsory insurances. The Workmen Compensation Act, 1923 is additional form of compulsory insurance under the ambit of Public Liability Insurance Act, 1991.<sup>1427</sup>

### 3.1. WORKMEN COMPENSATION ACT, 1923.

This legislation is also known as the '*Employees Compensation Act, 1923*' and is an Act which was postulated to address the grievance of the workmen and the employees working in any establishments or organizations where this Act mandates the employers to compensate the employees for any injuries or loss sustained in the course of their employment. There are few facets where the employer is not liable to pay the compensation to the employees if the injury sustained does not result in the entire or partial disablement of the employee or the workmen for a period exceeding three days. Secondly, if the injury or loss did not lead to the instant death or permanent total disablement, when met by any accident which the employee happens to attribute at the time when being influenced by alcohol or drugs. Further, if there is a willful disobedience of the employee to an order if the rule is expressly given or expressly framed for the purpose of securing the safety of employees, or if there is a deliberate exclusion or contempt by the employee of any safeguard or other maneuver which has been provided for the purpose of acquiring the protection towards

<sup>1423</sup> Vanshika Arora, *Overview of Public Liability Insurance Act 1991*, I PLEADERS, (Mar. 30, 2024, 12:13 PM), <http://Overview of Public Liability Insurance Act, 1991 - iPleaders>.

<sup>1424</sup> Prof. Venkatesh Ganapathy, *Liability Insurance in India: Opportunities & Challenges*, XXV, AWE., 12, 68 (2018), [http://Untitled-1 \(researchgate.net\)](http://Untitled-1 (researchgate.net)).

<sup>1425</sup> *Union Carbide Corporation v. Union of India*, 1990 AIR 273, 1989 SCC (2) 540.

<sup>1426</sup> Amina Sharif, *Case Study for Bhopal Gas Tragedy*, PP SAVANI UNIVERSITY, (Mar. 31, 2024, 10:30 AM), [http://\(PDF\) Case study for Bhopal Gas Tragedy \(researchgate.net\)](http://(PDF) Case study for Bhopal Gas Tragedy (researchgate.net)).

<sup>1427</sup> Sonal Verma and Fauzia Khan, *Workplace Safety & Public Liability Insurance Act – A Ready Reckoner with special ESG Insights*, MONDAQ (Mar. 30, 2024, 5:40 PM), [http://Workplace Safety & Public Liability Insurance Act - A Ready Reckoner With Special ESG Insights - Employee Benefits & Compensation - India \(mondaq.com\)](http://Workplace Safety & Public Liability Insurance Act - A Ready Reckoner With Special ESG Insights - Employee Benefits & Compensation - India (mondaq.com)).

the employees or the workmen in any establishment or institution or workplace.<sup>1428</sup> This enactment of Workmen Compensation Act, 1923 was at its inception was circulated by the Trial Court and later implemented by numerous state agencies to deal with this challenging questions related to workmen and employees.<sup>1429</sup> This Act provides social security under the law for the workers who endeavor and are engaged in gruesome service under any establishment or organization where it is essential to provide basic minimum wages to the workers including salary security, restorative treatment, and rehabilitation for employees who are impaired or have become indisposed because of their work or labor obligations.<sup>1430</sup> The Act was introduced after it was perceived that the workers are getting more exposed to the hazardous environment with the use of advanced and sophisticated machinery or equipment without any safety gears and kits provided at their disposal. Therefore, Section 35 of the Workmen Compensation Act 1923, connotes and implies that it is mandatory to indemnify the worker with the loss suffered in the work premises or establishment and sets guidelines for the company and industries which appoints workmen in their premises for work to compulsorily take insurance for the purpose of avoiding any catastrophe events leading to any accident or loss. Hence, there are special posts for the appointment of Inspector to keep checks and inspections on the industries compensation schemes.<sup>1431</sup> This is necessary because workers usually belong to the weaker section of the society and have to go through a tedious legal process for claiming compensation. The employers should provide the workers involved in hazardous occupation

<sup>1428</sup> Madhuri Paliana, *Employees Compensation Act, 1923: Amazing facts to know about it*, I PLEADERS, (Mar.31, 2024, 3:50 PM), [http://EmployeesCompensationAct,1923:OverviewandAnalysis\(ipleaders.in\)](http://EmployeesCompensationAct,1923:OverviewandAnalysis(ipleaders.in)).

<sup>1429</sup> Navnit Kumari, *An Overview on Workmen Compensation Act, 1923*, LEGAL SERVICE INDIA, ( Mar.31, 2024, 04:30 PM), [http://AnoverviewonWorkmencompensationAct1923\(legalserviceindia.com\)](http://AnoverviewonWorkmencompensationAct1923(legalserviceindia.com)).

<sup>1430</sup> Padmarajagopalan.M., Mr. Hariraman. B., *A Critical Study on Workers Compensation in India*, 2 INT. JR. R. PUB. & RE. 1019, 1021-1022 (2021),[http://ACriticalStudyonWorkersCompensationinIndia\(ijrr.com\)](http://ACriticalStudyonWorkersCompensationinIndia(ijrr.com)).

<sup>1431</sup> Tazeen Ahmed, *Workmen Compensation Act, 1923: An Overview*, LAW CORNER, (Apr. 01, 2024, 10:30AM),<http://WorkmenCompensationAct1923:AnOverview-LawCorner>.

with basic facilities and remuneration to maintain their interest and standard of living in accordance with the Workmen Compensation Act, 1923 which provides immediate relief and compensation to the workers or the employees in case of any impairment or loss suffered in the course of employment. The Act includes compensation for death or permanent injury<sup>1432</sup> of the worker at the workplace during the occupation or engagement. Thereby, the insurance is not bought by the worker themselves, but the insurance is purchased by the owner from the state government (state workmen insurance), the insurance is done to protect the workers from the accidents that could take place in that hazardous occupation. The policy is made to protect the workers and the employees who engage in perilous conditions as and when sought to render their service in their respective organizations or establishments under the whims and fancies of their employers who are delicately administered under the realm of the Workmen Compensation Act, 1923.<sup>1433</sup>

#### CHAPTER IV

#### CONCLUDING OBSERVATION.

The notion of compulsory Insurance and the risks involved in the domain of the Insurance and the Banking laws has been critical in the standpoint that the law needs to keep pace with the burgeoning changes in the insurance sectors and policies involved wherein the provisions of the Motor Vehicle Act, 1988 has to be adhered and followed where there is a Third-party liability invoked and appealed to redress the issues pertaining to the safeguard mechanisms which are provided to the victims for the grant of the satisfactory compensation which are relatively motivated to lessen the impact of the unforeseen calamity which can neither be predicted nor can be stopped but can be anticipated. The Risk or the peril envisaged under the ambit of Section 140 of

<sup>1432</sup> Public Insurance Act 1991, §3(1), No.6, Acts of Parliament, 1991 (India).

<sup>1433</sup> Vaishali Sharma, *Workmen Compensation Act, 1923*, RESEARCH GATE, (Apr. 01, 2024, 10:30 PM), [http://\(PDF\)workmencompensationact1923\(researchgate.net\)](http://(PDF)workmencompensationact1923(researchgate.net)).



Motor Vehicle Act, 1988, is designed with the humane prospect of providing aid to the victims or their legal heirs or representatives are not overwhelmed or burdened with proving negligence, and the compensation sought is not contingent on establishing fault of the part of the Insured or the claims which are affected by accidents caused by the motor vehicles, leading to either damages and losses to the person which might result to the death or permanent disability. The inclusion of the third-party insurance clause and compensation through the no-fault liability provision reflects a positive evolution in the legal dimensions wherein if any liability arising on the insured by the third party is mitigated by the Insurance company for ensuring justice for those affected by the motor vehicle accidents. Insurances plays vital role by indemnifying the maximum of the loss that has been suffered. The risk is unpredictable but in certain areas the risk can be predicted for example in the case of workmen conditions, where the workers are working under hazardous conditions may it be dangerous gas installation, or it be heavy machinery installation. Risks in such situation can be predicted to some extent and for the same the government after the Bhopal gas Tragedy has made it compulsory for such situation to have compulsory insurances for the third-party protection who can get the damage. The compulsory insurance is not only for the person who opt for the insurances but is for the whole society that whosoever gets affected by the work of the be compensated for the loss he/she suffers. The current legal statutes for compulsory insurances are strict enough may it be the Third-party motor insurance or the Public Liability insurance, both are regulated and changed with time to time. But the research of the paper deals with the shortage of the policies in the legal system, insurances that are present in the society but their implementation should me compulsory and not on optional basis, insurances which has the same nature of resulting in the loss of the Third party on the negligence or whatever act of the second or the

Insured party should have a valid compulsory insurance so that the Third party can easily get the compensation for the loss and for the same that person do not have to go to the legal courts.